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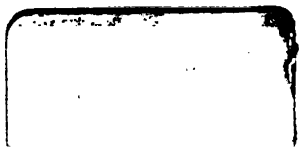
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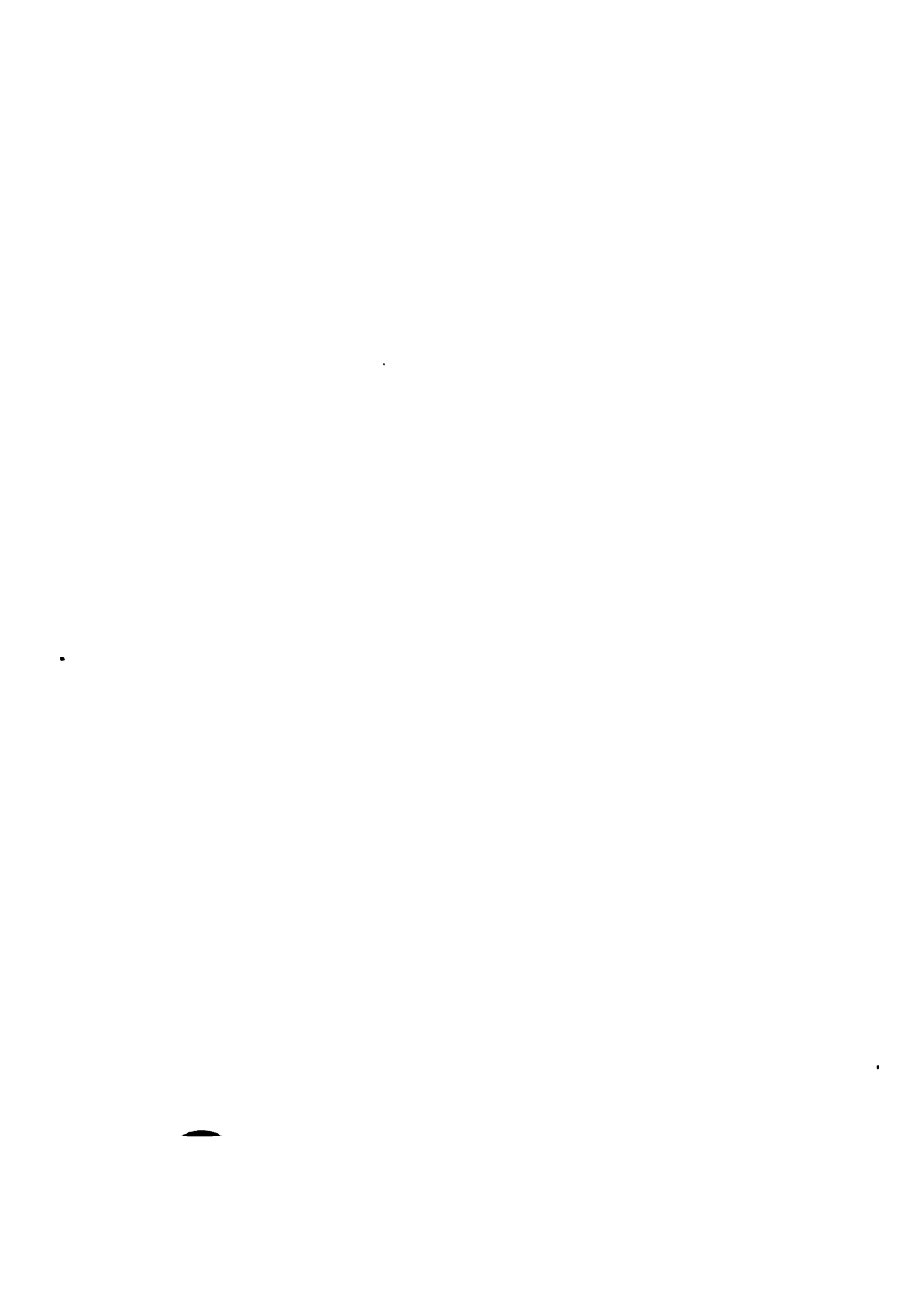
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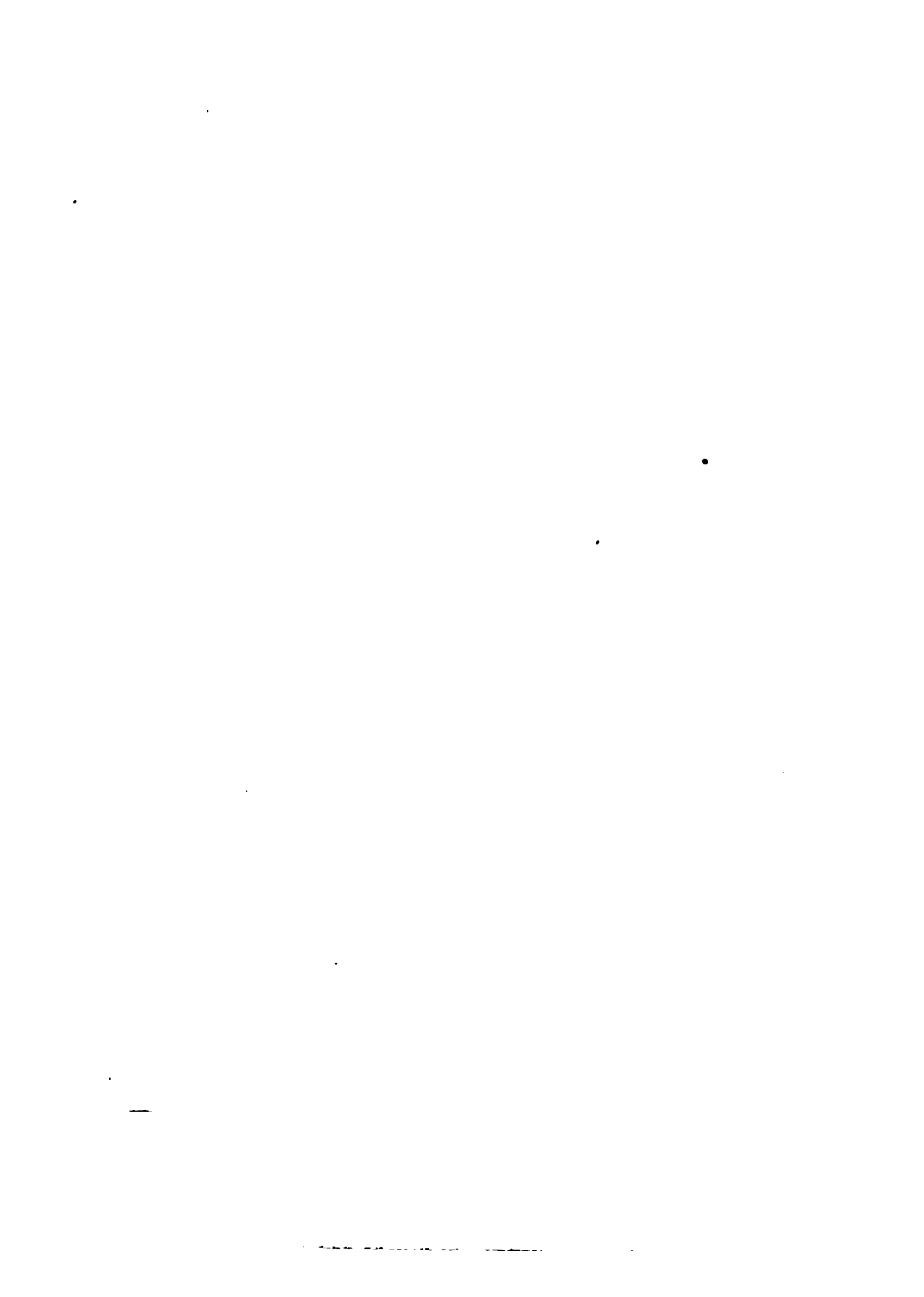






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**THE**  
**PENAL CODE.**



THE  
PENAL CODE  
OF THE  
STATE OF CALIFORNIA.

ADOPTED FEBRUARY 14, 1872.

WITH AMENDMENTS UP TO AND INCLUDING THOSE OF THE THIRTY-  
EIGHTH SESSION OF THE LEGISLATURE, 1909.

WITH  
CITATION DIGEST UP TO AND INCLUDING VOLUME 154  
CALIFORNIA REPORTS AND VOLUME 8  
APPELLATE REPORTS.

EDITED BY  
JAMES H. DEERING,  
OF THE SAN FRANCISCO BAR.

LEGISLATIVE HISTORY BY  
CHARLES H. FAIRALL,  
AUTHOR OF FAIRALL'S CRIMINAL LAW AND PROCEDURE.

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## CONSTITUTIONAL PROVISIONS.

**Art. I, § 1.** All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

**Art. I, § 4.** . . . No person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief. . . .

**Art. I, § 5.** The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

**Habeas corpus.** See U. S. Const., art. I, § 9, subd. 2.

**Art. I, § 6.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

**Art. I, § 7.** The right of trial by jury shall be secured to all, and remain inviolate. . . . A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court. . . .

**Art. I, § 8.** Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

**Art. I, § 9.** . . . In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the

jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication-office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

**Art. I, § 13.** In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law. The legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

**Art. I, § 16.** No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

**Art. I, § 20.** Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

**Art. II, § 1.** . . . No . . . person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this state.

**Art. IV, § 17.** The assembly shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

**Art. IV, § 18.** The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice and associate justices of the supreme court, and judges of the superior courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under the state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.

**Art. IV, § 21.** No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

**Art. VI, § 1.** The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may establish in any incorporated city or town, or city and county.

**Art. VI, § 4.** The supreme court shall have appellate jurisdiction . . . in all criminal cases prosecuted by indictment, or information in a court of record on questions of law alone. . . . Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any superior court in the state, or before any judge thereof.

**Art. VI, § 5.** The superior court shall have original jurisdiction . . . in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for. . . . They shall have appellate jurisdiction in such cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. . . . Said courts, and their judges, shall have power to issue writs of

. . . habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. . . .

**Art. VI, § 19.** Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

**Art. XII, § 19.** No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket, by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

**Art. XX, § 2.** Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this constitution.

**Art. XX, § 10.** Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment.

**Art. XX, § 11.** Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

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**THE**  
**PENAL CODE**  
**OF**  
**CALIFORNIA.**

**IN THREE PARTS.**

**TITLE OF THE ACT. § 1.**

**PRELIMINARY PROVISIONS. §§ 2-24.**

**PART I. CRIMES AND PUNISHMENTS. §§ 26-680.**

**II. CRIMINAL PROCEDURE. §§ 681-1570.**

**III. STATE PRISONS AND COUNTY JAILS. §§ 1572-1615.**

**Pen. Code—1**

**(1)**





**THE**  
**PENAL CODE**  
**OF**  
**CALIFORNIA.**

**AN ACT**  
**TO ESTABLISH A PENAL CODE.**

[Approved February 14, 1872.]

*The People of the State of California, represented in Senate and  
Assembly, do enact as follows:*

**TITLE OF THE ACT.**

§ 1. Title and divisions of this act.

**Title and divisions of this act.**

§ 1. This act shall be known as The Penal Code of California, and is divided into three parts, as follows:

- I. Of Crimes and Punishments.
- II. Of Criminal Procedure.
- III. Of the State Prison and County Jails.

**Legislation § 1. Enacted February 14, 1872.**

**This act, how cited: Post, § 24.**

**Construction of the codes, and of their various sections: See Pol. Code, §§ 4478 et seq.**

**THE PENAL CODE OF CALIFORNIA.**

**PRELIMINARY PROVISIONS.**

- § 2. When this act takes effect.
- § 3. Not retroactive.
- § 4. Construction of the Penal Code.
- § 5. Provisions similar to existing laws, how construed.

- § 6. Effect of code upon past offenses.
- § 7. Certain terms defined in the senses in which they are used in this code.
- § 8. What intent to defraud is sufficient.
- § 9. Civil remedies preserved.
- § 10. Proceedings to impeach or remove officers and others preserved.
- § 11. Authority of courts-martial preserved. Courts of justice to punish for contempt.
- § 12. Of sections declaring crimes punishable. Duty of court.
- § 13. Punishments, how determined.
- § 14. Witness's testimony may be read against him on prosecution for perjury.
- § 15. "Crime" and "public offense" defined.
- § 16. Crimes, how divided.
- § 17. Felony and misdemeanor defined.
- § 18. Punishment of felony, when not otherwise prescribed.
- § 19. Punishment of misdemeanor, when not otherwise prescribed.
- § 20. To constitute crime there must be unity of act and intent.
- § 21. Intent, how manifested, and who considered of sound mind.
- § 22. Drunkenness no excuse for crime. When it may be considered.
- § 23. Certain statutes specified as continuing in force.
- § 24. This act, how cited.

#### When this act takes effect.

§ 2. This code takes effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

Legislation § 2. Enacted February 14, 1872.

Effect of codes generally: See Pol. Code, §§ 4478 et seq.

#### Not retroactive.

§ 3. No part of it is retroactive, unless expressly so declared.

Legislation § 3. Enacted February 14, 1872.

Citations. Cal. 106/680.

Impairing vested rights: See Code Civ. Proc., § 8.

Corresponding sections. The same section is found in each of the other three codes: See Code Civ. Proc., § 3; Civ. Code, § 3; Pol. Code, § 3.

#### Construction of the Penal Code.

§ 4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Legislation § 4. Enacted February 14, 1872; identical with Field Draft, § 10, N. Y. Pen. Code, § 11.

Citations. Cal. 45/481; 46/117; 49/70; 82/274; 88/139; 93/584, 631; 105/558; 127/316; 139/382. App. 1/398.

Rules of construction of code provisions generally: See Pol. Code, §§ 4478 et seq.

Statutes in derogation of common law: See Code Civ. Proc., § 4; Civ. Code, § 4; Pol. Code, § 4.

#### Provisions similar to existing laws, how construed.

§ 5. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Legislation § 5. 1. Enacted February 14, 1872; based on Mass. Rev. Laws 1858, c. clixvii, § 9. 2. Amendment by Stats. 1901, p. 488, and held unconstitutional, in *Lewis v. Dunne*, 184 Cal. 291; Mr. Justice McFarland saying, "The said act . . . is unconstitutional, and void for all purposes, and is inoperative to change or in any way affect the law of the state as it stood immediately before the approval of said act. . . . The act covers one hundred and fifty pages of the published statutes of 1901; it amends over four hundred sections; it repeals nearly one hundred sections; it changes the numbers of other sections; it adds a great many new sections; and it contains this clause, 'Certain title and chapter headings . . . are hereby inserted, changed, and amended,' and then follow several pages of insertions, changes, and amendments of such headings. . . . We are forced to the conclusion that this act is a revision, and void for want of re-enactment and publication at large of the revised law." Thus the attempted repeals or attempted amendments of the Penal Code as embodied in the act of the legislature of 1901 were declared unconstitutional and void. This act was the result of an act approved March 25, 1895 (Stats. 1895, p. 845), whereby the legislature created and established "a commission for revising, systematizing, and reforming the laws of this state," and provided that "said commission, to be known as 'The Commissioners for the Revision and Reform of the Law,' should be appointed by the governor. This commission was duly appointed, and thereafter filed with the secretary of state a report recommending, among other things, a revision of the Penal Code, and the legislature (Stats. 1901, p. 117) embodied their recommendations in the act declared "unconstitutional, and void for all purposes."

#### Effect of code upon past offenses.

§ 6. No act or omission, commenced after twelve o'clock noon of the day on which this code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted, under such statutes and in force when this code takes effect. Any act or omission commenced

prior to that time may be inquired of, prosecuted, and punished in the same manner as if this code had not been passed.

Legislation § 6. Enacted February 14, 1872.

Citations. Cal. 46/116, 119; 55/229.

Effect on past offenses. Where, by subsequent statute, the punishment is increased, it is *ex post facto*, and inoperative: U. S. Const., art. I, § 10, subd. 1.

**Certain terms defined in the senses in which they are used in this code.**

§ 7. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage;

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law;

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission;

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity;

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal-boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons;

8. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen;

9. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight;

10. The word "property" includes both real and personal property;

11. The words "real property" are coextensive with lands, tenements, and hereditaments;

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

13. The word "month" means a calendar month, unless otherwise expressed; the word "daytime" means the period between sunrise and sunset, and the word "night-time" means the period between sunset and sunrise;

14. The word "will" includes codicil;

15. The word "writ" signifies an order or receipt in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings;

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and

appropriate meaning in law, must be construed according to such peculiar and appropriate meaning;

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority;

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name;

19. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories;

20. The word "section," whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned.

**Legislation § 7.** 1. Enacted February 14, 1872 (based on Mass. Rev. Laws 1858, c. iii, § 7; Iowa Rev. Laws 1860, c. iii, § 29; Field Draft, §§ 762-781, N. Y. Pen. Code, § 718), and then read: "Whenever the terms mentioned in this section are employed in the Penal Code, they are employed in the senses hereafter affixed to them, except where a different sense plainly appears—

1. The term 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.
2. The terms 'neglect,' 'negligence,' 'negligent' and 'negligently,' import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.
3. The term 'corruptly' imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.
4. The terms 'malice' and 'maliciously' import a wish to vex, annoy, or injure another person; established either by proof or presumption of law.
5. The term 'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.
6. The term 'bribe' signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action,

vote, or opinion, in any public or official capacity. 7. The word 'vessel,' when used with reference to shipping, includes ships of all kinds, steamboats and steamships, canal-boats, and every structure adapted to be navigated from place to place. 8 The term 'peace officer' signifies any one of the officers mentioned in section eight hundred and seventeen of this code. 9. The term 'magistrate' signifies any one of the officers mentioned in section eight hundred and eight of this code. 10. The term 'signature' includes any name, mark, or sign written with intent to authenticate any instrument or writing. 11. The term 'writing' includes both printing and writing. 12. The term 'land' and the phrases 'real estate' and 'real property,' include lands, tenements, and hereditaments, and all rights thereto and interest therein. 13. The term 'personal property' includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein. 14. The word 'property' includes personal and real property. 15. The word 'month' means a calendar month, unless otherwise expressed, and the word 'year,' and also the abbreviation 'A. D.' is equivalent to the expression 'year of our Lord.' 16. The word 'oath' includes 'affirmation' in all cases where an affirmation may be substituted for an oath; and in like cases the word 'swear' includes the word 'affirm.' Every mode of oral statement under oath or affirmation is embraced in the term 'testify,' and every written one, in the term 'depose.' 17. When the seal of a court or public officer, or officer, is required by law to be affixed to any paper, the word 'seal' includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto. 18. The word 'state,' when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words 'United States' may include the district and territories. 19. Where the term 'person' is used in this code to designate the party whose property may be the subject of any offense, it includes this state, any other state, government, or country which may lawfully own any property within this state, and all public and private corporations or joint associations, as well as individuals. 20. The word 'person' includes bodies politic and corporate. 21. The singular number includes the plural, and the plural the singular. 22. Words used in the masculine gender comprehend, as well, the feminine and neuter. 23. Words used in the present tense include the future, but exclude the past. 24. The word 'will' includes codicils. 25. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning. 26. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority." 2. Amended by Code Amdts. 1878-74, p. 419, (1) the introductory paragraph reading the same as the present amendment, down to the words "natural person," thereafter the paragraph proceeding, "writ-

any day set apart for any general or special election, in any election district or precinct in any county of the state where an election is in progress, during the hours when by law the polls are required to be kept open, is guilty of a misdemeanor.

**Legislation § 63b.** 1. Addition by Stats. 1901, p. 442; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 645; the code commissioner saying, "This is a codification of the statute of 1878-74, p. 297."

**No prosecution against witnesses testifying in election cases.**

§ 64. No person, otherwise competent as a witness, shall be disqualified or excused from testifying concerning any of the offenses enumerated and prescribed in this title, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against such witness for any such offense concerning which he testified for the prosecution.

**Legislation § 64.** Added by Stats. 1891, p. 185.

**Citations.** Cal. 146/809, 810, 811, 814, 815.

**Punishment of offenses against primary election laws.**

§ 64½. All the provisions of sections forty to sixty-four of this code, both inclusive, shall apply with like force and effect to elections, known and designated as primary elections, held and conducted under official supervision pursuant to law and to registration therefor, as to other elections, whether the word "primary" be used in connection with the word "election" or "elections" used in said sections or not.

**Legislation § 64½.** Added by Stats. 1899, p. 59, and became a law, under constitutional provision, without governor's approval, March 4, 1899. At the same session of the legislature, the same section was approved by the governor, March 20, 1899 (Stats. 1899, p. 158).



**Civil remedies preserved.**

§ 9. The omission to specify or affirm in this code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Legislation § 9. Enacted February 14, 1872; identical with Field Draft, § 788, N. Y. Pen. Code, § 722.

**Proceedings to impeach or remove officers and others preserved.**

§ 10. The omission to specify or affirm in this code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

Legislation § 10. Enacted February 14, 1872; identical with Field Draft, § 784, N. Y. Pen. Code, § 723.

**Authority of courts-martial preserved. Courts of justice to punish for contempts.**

§ 11. This code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

Legislation § 11. Enacted February 14, 1872; based on Field Draft, § 785, N. Y. Pen. Code, § 724.  
Citations. Cal. 94/838.

**Of sections declaring crimes punishable. Duty of court.**

§ 12. The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Legislation § 12. Enacted February 14, 1872; identical with Field Draft, § 11, N. Y. Pen. Code, § 12.

**Punishment of misdemeanor, when not otherwise prescribed.**

§ 19. Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both.

**Legislation § 19.** Enacted February 14, 1872; based on Field Draft, § 14, N. Y. Pen. Code, § 15; also based on Crimes and Punishment Act, Stats. 1850, p. 247, § 148, which read: "§ 148. Every offense or act which by law is declared to be a misdemeanor, and for which no punishment is specially prescribed, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both fine and imprisonment."

**Citations.** Cal. 68/418; 85/87, 211; 87/98; 102/428; 114/382, 371; 124/152, 153, 154; 139/116; 152/708. App. 5/578, 579, 580, 581.

**To constitute crime there must be unity of act and intent.**

§ 20. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.

**Legislation § 20.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 229, § 1, which had "intention" instead of "intent."

**Citations.** Cal. 63/168; 93/566; 116/77; 129/551; 138/341. App. 2/205; 4/324; 5/334.

**Intoxication, effect of:** Post, § 22.

**Insanity:** Post, § 26.

**Intent, how manifested, and who considered of sound mind.**

§ 21. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

**Legislation § 21.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 229, §§ 2, 3, which read: "§ 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused. § 3. A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years; or before that age, if such person knew the distinction between good and evil."

**Citations.** Cal. 132/329; 145/140.

**Presumptions as to intention.** Conclusive presumption. It is provided in the Code of Civil Procedure that a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another, shall be conclusively presumed: Code Civ. Proc., § 1962.

**Drunkness no excuse for crime. When it may be considered.**

§ 22. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

**Legislation § 22.** Enacted February 14, 1872; based on Field Draft, § 17, N. Y. Pen. Code, § 22; also based on Crimes and Punishment Act, Stats. 1850, p. 230, § 8, which read: "§ 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness for such malignant purpose shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she, or they had been possessed of sound reason and discretion."

**Citations.** Cal. 65/278; 93/112, 487; 95/428; 100/390; 108/575; 115/577; 122/239; 123/49; 132/332; 148/208; 151/641, 642, 643, 644, 647.

**Certain statutes specified as continuing in force.**

§ 23. Nothing in this code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts.
2. All acts consolidating cities and counties, and acts amending or supplementing such acts.
3. All acts for funding the state debt, or any part thereof, and for issuing state bonds, and acts amending or supplementing such acts.
4. All acts regulating and in relation to rodeos.
5. All acts in relation to judges of the plains.
6. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state.
7. All acts in relation to a branch state prison.
8. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.

9. An act for the suppression of Chinese houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six.

10. An act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy.

11. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six.

12. An act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin County, approved March thirty-first, eighteen hundred and sixty-six.

13. An act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six.

14. An act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

15. An act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy.

16. An act to regulate salmon fisheries in Eel River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine.

17. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

18. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one.

19. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six.

20. An act concerning gas companies, approved April fourth, eighteen hundred and seventy.

**Legislation § 23.** Enacted February 14, 1872.

**Further acts in force:** See Pol. Code, §§ 19, 4442.

**Subds. 1-6.** References to the acts referred to in the first six subdivisions will be found in the General Laws, under the various titles.

**Subds. 8-20.** The act referred to in subd. 8 will be found in Stats. 1867-68, p. 604; but see Stats. 1873-74, p. 499. In subd. 9, see Stats. 1865-66, p. 641; amended by Stats. 1873-74, p. 84; superseded by Pen. Code, § 315. In subd. 10, see Stats. 1869-70, p. 585; Stats. 1875-76, p. 325; repealed by Stats. 1895, pp. 76, 201. In subd. 11, see Stats. 1865-66, p. 332. In subd. 12, see Stats. 1865-66, p. 637. In subd. 13, see Stats. 1865-66, p. 857. In

subd. 14, see Stats. 1867-68, p. 13; but see amendment, Stats. 1871-72, p. 441. In subd. 15, see Stats. 1869-70, p. 325. In subd. 16, see Stats. 1859, p. 298. In subd. 17, see Stats. 1865-66, p. 322. In subd. 18, see Stats. 1851, p. 432; but see repealing clause, Stats. 1873-74, p. 940. In subd. 19, see Stats. 1865-66, p. 848; also see Stats. 1873-74, p. 940.

**Amendments and new sections.** Many amendments and new sections to the Penal Code are taken from "An act to amend the Penal Code," approved March 30, 1874; Code Amdts. 1873-74, p. 419. The amendatory act contained two other sections, in reference to the effect of the new provisions, as follows:

Sec. 88. All provisions of law inconsistent with the provisions of this act are repealed, except as to offenses committed before this act takes effect, and as to such offenses and for the punishment of parties guilty thereof, the repealed provisions shall continue in force.

Sec. 89. This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

#### **This act, how cited.**

§ 24. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as The Penal Code, adding, when necessary, the number of the section.

**Legislation § 24.** Enacted February 14, 1872.

**This act, how cited.** The constitution nowhere uses the word "code," but speaks of the way in which an "act" may be revised or amended: Constat., art. iv, § 24. See opinion of Mr. Justice McKinstry, in Earle v. Board of Education, 55 Cal. 494.

**Title of the act:** See ante, § 1.

**Pen. Code—2**

## TITLE VI.

**Crimes against the Legislative Power.**

- § 81. Preventing the meeting or organization of either branch of the legislature.
- § 82. Disturbing the legislature while in session.
- § 83. Altering draft of bill or resolution.
- § 84. Altering enrolled copy of bill or resolution.
- § 85. Giving or offering bribes to members of the legislature.
- § 86. Receiving bribes by members of the legislature.
- § 87. Witnesses refusing to attend, testify, or produce papers before the legislature or committees thereof.
- § 88. Members of the legislature, in addition to other penalties, to forfeit office and be disqualified, etc.
- § 89. Lobbying, and penalty for.

**Preventing the meeting or organization of either branch of the legislature.**

§ 81. Every person who willfully, and by force or fraud, prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

Legislation § 81. Enacted February 14, 1872; based on Field Draft, § 113, N. Y. Pen. Code, § 59.

**Disturbing the legislature while in session.**

§ 82. Every person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Legislation § 82. Enacted February 14, 1872; based on Field Draft, § 114, N. Y. Pen. Code, § 60.

**Altering draft of bill or resolution.**

§ 83. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer

of either house, in language different from that intended by such house, is guilty of felony.

**Legislation § 83.** Enacted February 14, 1872; identical with Field Draft, § 118, N. Y. Pen. Code, § 64.

#### **Altering enrolled copy of bill or resolution.**

§ 84. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature of this state, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the legislature, is guilty of felony.

**Legislation § 84.** Enacted February 14, 1872; based on Field Draft, § 119, N. Y. Pen. Code, § 65.

#### **Giving or offering bribes to members of the legislature.**

§ 85. Every person who gives or offers to give a bribe to any member of the legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than ten years.

**Legislation § 85.** Enacted February 14, 1872; based on Field Draft, § 120, N. Y. Pen. Code, § 66; Crimes and Punishment Act, Stats. 1850, p. 239, §§ 84, 85, 86; Stats. 1868, p. 645, §§ 1, 2.

**Citations.** App. 2/304.

**Bribery:** See ante, §§ 67, 68.

#### **Receiving bribes by members of the legislature.**

§ 86. Every member of either of the houses composing the legislature of this state who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question is punishable by imprisonment in the

state prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office or public trust.

**Legislation § 86.** 1. Enacted February 14, 1872 (based on Field Draft, § 121, N. Y. Pen. Code, § 67; Crimes and Punishment Act, Stats. 1850, p. 239, §§ 84, 85, 86; Stats. 1863, p. 645, §§ 1, 2), and then ended with the words "nor more than fourteen years." 2. Amended by Code Amdts. 1880, p. 7.

**Citations.** App. 1/64, 65, 67, 70; 2/199, 204, 206; 7/689.

**Witnesses refusing to attend, testify, or produce papers before the legislature or committees thereof.**

§ 87. Every person who, being summoned to attend as witness before either house of the legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either house of the legislature or any committee thereof, willfully refuses to be sworn or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

**Legislation § 87.** Enacted February 14, 1872; based on Field Draft, §§ 122, 123, N. Y. Pen. Code, §§ 68, 69; Stats. 1857, p. 97, § 1.

**Members of the legislature, in addition to other penalties, to forfeit office and be disqualified, etc.**

§ 88. Every member of the legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this state.

**Legislation § 88.** Enacted February 14, 1872; based on Field Draft, § 124, N. Y. Pen. Code, § 70.

**Lobbying, and penalty for.**

§ 89. Every person who obtains, or seeks to obtain money or other thing of value from another person, upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness shall be excused from testifying as such



concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding except for perjury in giving such testimony.

**Legislation § 89.** 1. Added by Code Amdts. 1873-74, p. 456, the first sentence then reading as at present, and thereafter the section proceeding, "If, upon the trial of an indictment found under the provisions of this section, the accused is examined as a witness in his own behalf, evidence may then be given that he has committed acts in violation of the provisions of this section other than the acts charged in the indictment. Upon the trial no person otherwise competent as a witness shall be disqualified from testifying as such concerning the offense charged, on the ground that such testimony may criminate himself; but no prosecution can afterward be had against him for any offense concerning which he testified." 2. Amended by Code Amdts. 1880, p. 7. Citations. App. 1/550.

## TITLE VII.

## Crimes against Public Justice.

- Chapter I. Bribery and Corruption. §§ 92-100.
- II. Rescues. §§ 101, 102.
- III. Escapes, and Aiding Therein. §§ 105-111.
- IV. Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents. §§ 113-117.
- V. Perjury and Subornation of Perjury. §§ 118-129.
- VI. Falsifying Evidence. §§ 132-138.
- VII. Other Offenses against Public Justice. §§ 142-181.
- VIII. Conspiracy. §§ 182-185.

## CHAPTER I.

## Bribery and Corruption.

- § 92. Giving bribes to judges, jurors, referees, etc.
- § 93. Receiving bribes by judicial officers, jurors, etc.
- § 94. Extortion. Misconduct of judicial officers. Stenographers.
- § 95. Improper attempts to influence jurors, referees, etc.
- § 96. Misconduct of jurors, referees, etc.
- § 97. Justice or constable purchasing judgment.
- § 98. Officers to forfeit and be disqualified from holding office.
- § 99. Superintendent of state printing. Shall not have any interest in contract of any kind connected with his office. Penalty.
- § 100. Superintendent of state printing, penalty for collusion.

## Giving bribes to judges, jurors, referees, etc.

§ 92. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Legislation § 92. Enacted February 14, 1872; based on Field Draft, § 125, N. Y. Pen. Code, § 71; Crimes and Punishment Act, §§ 84, 85, 86, 106, as amended by Stats. 1856, p. 220, § 10; Stats. 1863, p. 645, §§ 1, 2.

Bribery of executive officers: See ante, § 67.

**Receiving bribes by judicial officers, jurors, etc.**

§ 93. Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than ten years.

**Legislation § 93.** Enacted February 14, 1872; based on Field Draft, § 126, N. Y. Pen. Code, § 72; Crimes and Punishment Act, §§ 84, 85, 86, 106, as amended by Stats. 1856, p. 220, § 10; Stats. 1863, p. 645, §§ 84, 85, 86.

**Citations.** Cal. 64/486; 99/828, 880.

**Extortion. Misconduct of judicial officers. Stenographers.**

§ 94. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him, or any other person, to record the proceedings of any court or investigation held by him, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. Any stenographer or reporter, appointed by any judicial officer in this state, who shall pay, or offer to pay, the whole or any part of the fees allowed him by law, for his appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts of this state.

**Legislation § 94.** 1. Enacted February 14, 1872 (based on Field Draft, § 102, N. Y. Pen. Code, § 557; Crimes and Punishment Act, Stats. 1850, p. 239, §§ 84, 85), the section then consisting of the first sentence of the present amendment. 2. Amended by Stats. 1895, p. 80, adding the second and third sentences. 3. Amendment by Stats. 1901, p. 442; unconstitutional: See note, § 5, ante.

**Extortion by executive officer:** See ante, § 70.

**Improper attempts to influence jurors, referees, etc.**

§ 95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator, or umpire, or appointed a referee, in respect to his verdict in, or

decision of any cause, or proceeding, pending, or about to be brought before him, either:

One. By means of any communication, oral or written, had with him except in the regular course of proceedings;

Two. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;

Three. By means of any threat, intimidation, persuasion, or entreaty; or,

Four. By means of any promise, or assurance of any pecuniary or other advantage;

—Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years.

**Legislation § 95.** 1. Enacted February 14, 1872 (based on Field Draft, § 181, N. Y. Pen. Code, § 75; Crimes and Punishment Act, § 106, as amended by Stats. 1856, p. 220, § 10), and differed from the present amendment, having (1) in introductory paragraph, the words "or proceeding" after "any cause"; (2) in subds. 1 and 2, the words "upon the trial of the cause; or," at end of subdivisions; (3) in subd. 4, the words "assurance or promise" instead of "promise, or assurance." 2. Amended by Code Amdts. 1873-74, p. 424.

**Citations.** Cal. 61/185; 64/486; 121/889.

#### **Misconduct of jurors, referees, etc.**

§ 96. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

One. Makes any promise or agreement to give a verdict or decision for or against any party; or,

Two. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years.

**Legislation § 96.** 1. Enacted February 14, 1872 (based on Field Draft, § 128, N. Y. Pen. Code, § 78; Crimes and Punishment Act, § 106, as amended by Stats. 1856, p. 220, § 10), and differed from the present amendment, (1) not having the words "or matter" after "any cause"; (2) having the words "upon the trial of such cause" after "course of proceedings," these latter words then ending the subdivisions, the matter now following them being a paragraph. 2. Amended by Code Amdts. 1873-74, p. 424.

**Citations.** Cal. 64/486; 99/830.

**Justice or constable purchasing judgment.**

§ 97. Every justice of the peace or constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of such justice, is guilty of a misdemeanor.

**Legislation § 97.** Enacted February 14, 1872.

**Officers to forfeit and be disqualified from holding office.**

§ 98. Every officer convicted of any crime defined in this chapter, in addition to the punishment described, forfeits his office and is forever disqualified from holding any office in this state.

**Legislation § 98.** Enacted February 14, 1872.

**Forfeiture of office on conviction of crime:** See post, § 673.

**Superintendent of state printing.** Shall not have any interest in contract of any kind connected with his office. Penalty.

§ 99. The superintendent of state printing shall not, during his continuance in office, have any interest, either directly or indirectly, in any contract in any way connected with his office as superintendent of state printing; nor shall he, during said period, be interested, either directly or indirectly, in any state printing, binding, engraving, lithographing, or other state work of any kind connected with his said office; nor shall he, directly or indirectly, be interested in any contract for furnishing paper, or other printing stock or material, to or for use in his said office; and any violations of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the state prison for a term of not less than two years nor more than five years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or by both such fine and imprisonment.

**Legislation § 99.** 1. Added by Code Amdts. 1875-76, p. 19, and then read: "The superintendent of state printing shall not, during his continuance in office, have any interest, directly or indirectly, in the publication of any newspaper or periodical, or in any printing of any kind, or in any binding, engraving, or lithographing, or in a contract for furnishing paper, or other printing stock or material connected with the state printing; and any violation of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the state prison for a term of not less than two years nor more than five years, and a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and im-

prisonment." 2. Amended by Code Amdts. 1877-78, p. 11, the first part of the section then reading, "The superintendent of state printing shall not, during his continuance in office, have any interest, directly or indirectly, in any printing of any kind, or in any binding, engraving, or lithographing, or in a contract for furnishing paper or other printing stock or material connected with the state printing," the rest of the section reading same as the original section, except that the word "by" was added before "both such fine and imprisonment," at end of section. 3. Amended by Stats. 1895, p. 285.

### **Superintendent of state printing, penalty for collusion.**

§ 100. If the superintendent of state printing corruptly colludes with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or has any secret understanding with him or them, by himself or through others, to defraud the state, or by which the state is defrauded or made to sustain a loss, contrary to the true intent and meaning of this chapter, he, upon conviction thereof, forfeits his office, and is subject to imprisonment in the state prison for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment.

Legislation § 100. 1. Added by Code Amdts. 1875-76, p. 19, and then read: "If the said superintendent of state printing shall corruptly collude with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or have any secret understanding with him or them, by himself or through others, to defraud the state, or by which the state shall be defrauded or made to sustain a loss, contrary to the true intent and meaning of this act, he shall, upon conviction thereof, in any court of competent jurisdiction, forfeit his office, and be subject to imprisonment in the state prison for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment." 2. Amendment by Stats. 1901, p. 443; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 647.

"Contrary to the true intent and meaning of this chapter." By § 5 of the act entitled "An Act to amend the Political and Penal Codes, concerning public printing, and for other purposes," approved April 3, 1876 (see Code Amdts. 1875-76, p. 16), §§ 99 and 100 were added to the Penal Code. That act also amended a number of the sections of the Political Code, relating to public printing, and the reference in § 100, supra, is intended to be to that act, and not to the Penal Code.

## CHAPTER II.

## Rescues.

§ 101. Rescuing prisoners.

§ 102. Retaking goods from custody of officer.

## Rescuing prisoners.

§ 101. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death: by imprisonment in the state prison not less than one nor more than fourteen years;

2. If such prisoner was in custody upon a conviction of any other felony: by imprisonment in the state prison not less than six months nor more than five years;

3. If such prisoner was in custody upon a charge of felony: by a fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding two years;

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony: by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months.

**Legislation § 101.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 240, §§ 93, 94, which read: "§ 93. If any person or persons shall set at liberty, or rescue, any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year, nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the state prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued. § 94. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable in the state prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue or setting

at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty."

**Retaking goods from custody of officer.**

§ 102. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

Legislation § 102. Enacted February 14, 1872; based on Field Draft, § 185, N. Y. Pen. Code, § 83.

**CHAPTER III.**

**Escapes, and Aiding Therein.**

- § 105. Escapes from state prison, punishment of.
- § 106. Attempt to escape from state prison.
- § 107. Escapes from other than state prison.
- § 108. Officers suffering convicts to escape.
- § 109. Assisting prisoners to escape.
- § 110. Carrying into prison things useful to aid in escape.
- § 111. Expense of trial for escape.

**Escapes from state prison, punishment of.**

§ 105. Every prisoner confined in a state prison, for a term less than for life, who escapes therefrom, is punishable by imprisonment in a state prison for a term of not less than one year; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

Legislation § 105. 1. Enacted February 14, 1872 (based on Stats. 1855, p. 208, § 1), and then read: "Every prisoner confined in the state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term equal in length to the term he was serving at the time of such escape." 2. Amended by Code Amdts. 1880, p. 42, adding the second clause of the section, which read as at present. 3. Amended by Stats. 1905, p. 723; the code commissioner saying, "The old section was open to the objection that the punishment prescribed was unequal, not proportionate to the offense, and its constitutionality on that account has been sometimes doubted. The cases of *State v. Lewin*, (Kan.) 37 Pac. Rep. 168; *Barbier v. Connolly*, 118 U. S. 27; *Coon Hing v. Crowley*, 118 U. S. 703; *Hayes v. Missouri*, 120 U. S. 68; *Home Ins. Co. v. N. Y.*, 134 U. S. 594; *Pembina Mng. Co. v. Penn.*, 125 U. S. 181; *Crowley v. Christenson*, 137 U. S.



86; *Yick Wo v. Hopkins*, 118 U. S. 358; Civil Rights Cases, 103 U. S. 3, are cited in behalf of this view."

Citations. Cal. 88/170; 132/348; 135/348; 145/664.

**Punishment for assisting prisoner to escape.** See post, § 109, for the punishment imposed, in this state, upon a person who assists a prisoner confined in any prison, or in the lawful custody of any officer or person, to escape.

**Escape suffered by officers:** Post, § 108.

**Killing escaped prisoner is justifiable when:** See post, § 196.

#### **Attempt to escape from state prison.**

§ 106. Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison.

**Legislation § 106.** 1. Enacted February 14, 1872 (based on Field Draft, § 138, N. Y. Pen. Code, § 85), and then read: "Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is guilty of felony." 2. Amended by Code Amdts. 1880, p. 42.

#### **Escapes from other than state prison.**

§ 107. Every prisoner confined in any other prison than the state prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

**Legislation § 107.** Enacted February 14, 1872.

#### **Officers suffering convicts to escape.**

§ 108. Every keeper of a prison, sheriff, deputy sheriff, constable, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten years, and fine not exceeding ten thousand dollars.

**Legislation § 108.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 241, § 99 (Rep. Cod. Laws Cal. 1869, § 114), which read: "If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for any time not exceeding five years: Provided, that, if such prisoner be in custody charged with murder or other capital offense, then such officer or person suffering or permitting such escape, shall be punished by im-

prisonment in the state prison, for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offense before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five thousand dollars."

#### **Assisting prisoners to escape.**

§ 109. Any person who willfully assists any paroled prisoner whose parole has been revoked, any escape, any prisoner confined in any prison or jail, or any inmate of any public training school or reformatory, or any person in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or jail, or public training school or reformatory, or custody, is punishable as provided in section one hundred and eight of the Penal Code.

Legislation § 109. 1. Enacted February 14, 1872; based on Field Draft, § 144, N. Y. Pen. Code, § 88; also based on Crimes and Punishment Act, Stats. 1850, p. 241, § 98, which read: "§ 98. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offense against this state, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made), shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the county jail not exceeding five years." When enacted in 1872, § 109 read: "Every person who willfully assists any prisoner confined in any prison or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is punishable as provided in section 108 of this code." 2. Amendment by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 647, differing from the amendment of 1907 (the present section), (1) having, as the first words of the section, "Every person who willfully assists" instead of "Any person who willfully assists any paroled prisoner whose parole has been revoked, any escape"; (2) not having, at end of section, the words "of the Penal Code"; the code commissioner saying, "The amendment is designed to make it punishable to assist the escape of inmates of reformatories, and to accomplish this end the following insertions have been made: The words 'or jail, or reformatory,' the words 'or any person,' and the words 'or jail, or public training school, or reformatory.'" 4. Amended by Stats. 1907, p. 271.

#### **Carrying into prison things useful to aid in escape.**

§ 110. Every person who carries or sends into a prison, jail, public training school, or reformatory, anything useful to aid a prisoner or in-

mate in making his escape, with intent thereby to facilitate the escape of any prisoner or inmate confined therein, is punishable as provided in section one hundred and eight.

**Legislation § 110.** 1. Enacted February 14, 1872; based on Field Draft, § 142, N. Y. Pen. Code, § 87; also based on Crimes and Punishment Act, Stats. 1850, p. 241, § 96, which read: "§ 96. If any person shall carry to any convict imprisoned or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, and imprisonment in the state prison not exceeding five years." 2. Amendment by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 647, (1) inserting (a) "jail, public training school, or reformatory" after "prison," and (b) "or inmate" after "prisoner" in both instances; (2) omitting "of this code" at end of section; the code commissioner saying, "The change is in line with the proposed change in § 109."

#### **Expense of trial for escape.**

§ 111. Whenever a trial is had of any person under any of the provisions of sections one hundred and five and one hundred and six, and whenever a convict in the state prison is tried for any crime committed therein, the county clerk of the county where such trial is had must make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, and of the execution of the sentence of such convict, properly certified to by a judge of the superior court of such county, which statement must be sent to the board of state prison directors for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had.

**Legislation § 111.** 1. Added by Code Amdts. 1880, p. 9, and then read: "Whenever a trial shall be had of any person under any of the provisions of sections one hundred and five and one hundred and six of this code, and whenever a convict in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, properly certified to by a superior judge of said county, which statement shall be sent to the board of state prison directors for their approval; and after such approval, said board shall cause the amount of such costs to be paid out of the money ap-

propriated for the support of the state prison to the county treasurer of the county where such trial was had." 2. Amendment by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 774; the code commissioner saying, "It is manifestly proper that the county should be recompensed for the expenses covered by the amendment."

## CHAPTER IV.

**Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents.**

- § 113. Larceny, destruction, etc., of records by officers having them in custody.
- § 114. Larceny, destruction, etc., of records by other persons.
- § 115. Offering false or forged instruments to be filed of record.
- § 116. Adding names, etc., to jury-lists.
- § 117. Falsifying jury-lists, etc.

**Larceny, destruction, etc., of records by officers having them in custody.**

§ 113. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Legislation § 113. Enacted February 14, 1872; based on Field Draft, § 147, N. Y. Pen. Code, § 114; also based on Crimes and Punishment Act, Stats. 1850, p. 240, § 87, which read: "If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever of or belonging to any public office within this state, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than one nor more than ten years, and be fined in a sum not exceeding five thousand dollars."

Citations. Cal. 96/174, 175, 179, 180.

**Larceny, destruction, etc., of records by other persons.**

§ 114. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that sec-

tion, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both.

**Legislation § 114.** Enacted February 14, 1872; based on Field Draft, § 148; N. Y. Pen. Code, § 94; Crimes and Punishment Act, Stats. 1850, p. 240, § 87.

**Citations.** Cal. 96/174, 180.

**Offering false or forged instruments to be filed of record.**

§ 115. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state or of the United States, is guilty of felony.

**Legislation § 115.** Enacted February 14, 1872; based on Field Draft, § 149, N. Y. Pen. Code, § 95.

**Citations.** Cal. 84/569; 188/3.

**Adding names, etc., to jury-lists.**

§ 116. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or otherwise, or extracts any name therefrom, or destroys the jury-box or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

**Legislation § 116.** 1. Enacted February 14, 1872, differing from the amendment of 1873-74, (1) having the words "by a board of supervisors" after "persons selected"; (2) not having the words "for the county" after "serve as jurors." 2. Amended by Code Amdts. 1873-74, p. 425.

**Falsifying jury-lists, etc.**

§ 117. Every officer or person required by law to certify to the list of persons selected as jurors who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box the same names that are on the certified list, and no more and no less than are on such list, is guilty of a felony.

**Legislation § 117.** Enacted February 14, 1872.

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## CHAPTER V.

## Perjury and Subornation of Perjury.

- § 118. Perjury defined.
- § 118a. False affidavits as to affiant's testimony.
- § 119. Oath defined.
- § 120. Oath of office.
- § 121. Irregularity in administering oath.
- § 122. Incompetency of witness no defense.
- § 123. Witness's knowledge of materiality of testimony not necessary.
- § 124. Deposition, when deemed to be complete.
- § 125. Statement of that which one does not know to be true.
- § 126. Punishment of perjury.
- § 127. Subornation of perjury.
- § 128. Procuring the execution of innocent person.
- § 129. False return under oath, whether oath is taken or not.

**Perjury defined.**

§ 118. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

**Legislation § 118.** Enacted February 14, 1872; identical with Field Draft § 150, N. Y. Pen. Code, § 96. Crimes and Punishment Act, Stats. 1850, p. 239, § 82, read: "§ 82. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm willfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof shall be punished by imprisonment in the state prison for any term not less than one nor more than fourteen years."

**Citations.** Cal. 54/528; 59/374, 379; 63/63; 64/271; 103/427; 111/658; 113/75; 117/682; 120/132, 134, 135; 122/680; 131/260; 133/368; 136/392; 137/264, 266; 146/115, 117, 118. App. 6/497.

**Irregularity in administering oath:** See post, § 121.

**False sworn statement to mutual insurance company:** See Civ. Code, § 453j.

**False swearing in report of building and loan corporation:** See Civ. Code, § 645.

**False affidavits as to affiant's testimony.**

§ 118a. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or

certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false.

**Legislation § 118a.** 1. Addition by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 648; the code commissioner saying, "The object of this new section is to punish those who instigate litigation by making false affidavits respecting the facts to which they will testify and is made necessary by the decision of the supreme court in *People v. Simpton*, 138 Cal. 367."

#### Oath defined.

§ 119. The term "oath," as used in the last two sections, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

**Legislation § 119.** 1. Enacted February 14, 1872; based on Field Draft, § 151, N. Y. Pen. Code, § 97. 2. Amendment by Stats. 1901, p. 444; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 648, substituting "two sections" for "section"; the code commissioner saying, "The change is made necessary by the addition of § 118a to the code."

**Citations.** Cal. 138/370.

**Manner of administering oath.** That mode of swearing which the witness believes most obligatory may be adopted. No special form of oath or affirmation is required: Code Civ. Proc., §§ 2093-2097; see also post, § 121.

#### Oath of office.

§ 120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two [three] preceding sections.

**Legislation § 120.** Enacted February 14, 1872; based on Field Draft, § 152.

**Oath of office:** See Pol. Code, §§ 904 et seq.

#### Irregularity in administering oath.

§ 121. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner, or that the person

accused if perjury did not go before, or was not in the presence of, the officer purporting to administer the oath, if such accused caused or procured such officer to certify that the oath had been taken or administered.

Legislation § 121. 1. Enacted February 14, 1872; identical with Field Draft, § 152. N. Y. Pen. Code, § 97. The code commissioners cite *People v. Cook*, 4 Brd. 67. 2. Amended by Stats. 1901, p. 444; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 648, adding all the matter after the words "irregular manner"; the code commissioner saying, "The object of the amendment is to cut off the defense sometimes successfully made in perjury cases, that the defendant did not in fact go before the officer and take oath, it being at the same time admitted that he sent the affidavit to the officer with the intention that he should certify to it, and with the intention that it should be used as valid."

Citations. Cal. 64/271; 118/80; 131/256; 139/601. App. 6/503.

#### Incompetency of witness no defense.

§ 122. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Legislation § 122. Enacted February 14, 1872; based on Field Draft, § 154, N. Y. Pen. Code, § 98. The code commissioners cite *Van Steenberg v. Kortz*, 10 Johns. 167.

Citations. Cal. 64/271.

#### Witness's knowledge of materiality of testimony not necessary.

§ 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Legislation § 123. Enacted February 14, 1872; identical with Field Draft, § 155, N. Y. Pen. Code, § 99.

Citations. Cal. 82/610.

#### Deposition, when deemed to be complete.

§ 124. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.



**Legislation § 124.** 1. Enacted February 14, 1872; based on Field Draft, § 156, N. Y. Pen. Code, § 100. 2. Amendment by Stats. 1901, p. 444; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 648, adding the word "affidavit"; the code commissioner saying, "The purpose is of the same character as that of the amendment to the preceding section."  
**Citations.** Cal. 117/682; 118/51; 137/231.

**Statement of that which one does not know to be true.**

§ 125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

**Legislation § 125.** Enacted February 14, 1872; identical with Field Draft, § 157, N. Y. Pen. Code, § 101.  
**Citations.** Cal. 120/182, 184, 186.

**Punishment of perjury.**

§ 126. Perjury is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

**Legislation § 126.** Enacted February 14, 1872; based on Field Draft, § 158, N. Y. Pen. Code, § 106; also based on Crimes and Punishment Act, Stats. 1850, p. 241, § 82, q.v., ante, Legislation § 118.  
**Citations.** Cal. App. 4/75.

**Subornation of perjury.**

§ 127. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

**Legislation § 127.** Enacted March 14, 1872; based on Field Draft, §§ 162, 163, N. Y. Pen. Code, § 105; also based on Crimes and Punishment Act, Stats. 1850, p. 289, § 82, q.v., ante, Legislation § 118.

**Procuring the execution of innocent person.**

§ 128. Every person who, by willful perjury or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

**Legislation § 128.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 289, § 83, which read: "§ 83. Every person who, by willful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death." The code commissioners say: "This section is founded on the 83d

of the Crimes and Punishment Act [Crim. Prac. Act], which declares that any person so procuring the conviction and execution of an innocent person 'shall be deemed guilty of murder.' The offense certainly does not fall within any known definition of murder, and is repugnant to the definition of murder given in our statutes. The commission have therefore deemed it advisable to omit the words quoted and to affix the punishment to the act itself."

**False return under oath, whether oath is taken or not.**

§ 129. Every person who, being required by law to make any return, statement, or report, under oath, willfully makes and delivers any such return, statement, or report, purporting to be under oath, knowing the same to be false in any particular, is guilty of perjury, whether such oath was in fact taken or not.

Legislation § 129. 1. Addition by Stats. 1901, p. 444; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 649; the code commissioner saying, "The object of the section is similar to that of the proposed amendment to § 131. (See *People v. Simpton*, 138 Cal. 367.)"

## CHAPTER VI.

### Falsifying Evidence.

- § 132. Offering false evidence.
- § 133. Deceiving a witness.
- § 134. Preparing false evidence.
- § 135. Destroying evidence.
- § 136. Preventing or dissuading witness from attending.
- § 137. Bribing witnesses.
- § 138. Taking or offering to take bribes.

Code commissioner's note to Chapter VI. This "chapter is founded upon § 3 of the act of April 27, 1863 (Stats. 1863, p. 645), and §§ 84 and 86 of the Crimes and Punishment Act, as amended by the act cited. The language adopted is that of the New York Penal Code, §§ 165 to 170, inclusive. They more clearly define the offenses and carry out what evidently was the spirit and intent of that act."

**Offering false evidence.**

§ 132. Every person who upon any trial, proceeding, inquiry, or in vestigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or antedated, is guilty of felony.

Legislation § 132. Enacted February 14, 1872; based on Field Draft, § 165, N. Y. Pen. Code, § 107.

#### Deceiving a witness.

§ 133. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

Legislation § 133. Enacted February 14, 1872; based on Field Draft, § 166, N. Y. Pen. Code, § 108.

#### Preparing false evidence.

§ 134. Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

Legislation § 134. Enacted February 14, 1872; based on Field Draft, § 167, N. Y. Pen. Code, § 109.

#### Destroying evidence.

§ 135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

Legislation § 135. Enacted February 14, 1872; based on Field Draft, § 168, N. Y. Pen. Code, § 110.

#### Preventing or dissuading witness from attending.

§ 136. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

Legislation § 136. Enacted February 14, 1872; based on Field Draft, § 169, N. Y. Pen. Code, § 111.

Citations. Cal. 136/898.

**Bribing witnesses.**

§ 137. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony.

Legislation § 137. 1. Enacted February 14, 1872 (based on Field Draft, § 170, N. Y. Pen. Code, § 113), the final words of the section then reading, "to induce any witness to give false or to withhold true testimony, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1873-74, p. 425.

Citations. Cal. 78/170; 146/146.

**Taking or offering to take bribes.**

§ 138. Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a felony.

Legislation § 138. 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1873-74, p. 425, substituting "felony" for "misdemeanor" at end of section.

**CHAPTER VII.****Other Offenses against Public Justice.**

- § 142. Officer refusing to receive or arrest parties charged with crime.
- § 143. Public administrator, neglect of duty or violation of duty by.
- § 144. Receiving fee or compensation for services rendered in arresting fugitives from justice.
- § 145. Delaying to take person arrested before a magistrate.
- § 146. Making arrests, etc., without lawful authority.
- § 147. Inhumanity to prisoners.
- § 148. Resisting public officers in the discharge of their duties.
- § 149. Assaults, etc., by officers, under color of authority.
- § 150. Refusing to aid officers in arrest, etc.
- § 151. Taking extrajudicial oaths. [Repealed.]
- § 152. Administering extrajudicial oaths. [Repealed.]
- § 153. Compounding crimes.
- § 154. Debtor fraudulently concealing his property.
- § 155. Defendant fraudulently concealing his property.
- § 156. Fraudulent pretenses relative to birth of infant.

- § 157. Substituting one child for another.
- § 158. Common barratry defined. How punished.
- § 159. What proof is required.
- § 159a. Advertising to procure divorce.
- § 160. Misconduct by attorneys.
- § 161. Buying demands or suit by an attorney.
- § 161a. Who may advertise.
- § 162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.
- § 163. Limitation of preceding section.
- § 164. Grand juror acting after challenge has been allowed.
- § 165. Bribing boards of supervisors, etc.
- § 166. Criminal contempts.
- § 167. False certificates by public officers.
- § 168. Disclosing fact of indictment having been found.
- § 169. Grand juror disclosing what transpired before the grand jury.
- § 170. Maliciously procuring search-warrant.
- § 171. Unauthorized communication with convict.
- § 171a. Bringing certain drugs and firearms into or near prisons.
- § 171b. Ex-convicts coming upon or near prison grounds.
- § 171c. Tramp, vagrant, etc., coming into prison or upon grounds belonging thereto.
- § 172. Sale of liquors near state buildings and grounds.
- § 172a. Sale of liquors near university.
- § 173. Importing foreign convicts.
- § 174. Bringing Chinese into the state.
- § 175. Separate and distinct prosecution.
- § 176. Omission of duty by public officer.
- § 177. Offenses, when misdemeanors.
- § 178. Officers of corporations not to employ Chinese. [Repealed.]
- § 179. Corporations not to employ Chinese. [Repealed.]
- § 180. County treasurer shall not receive private moneys on deposit.
- § 180a. Bringing narcotics, intoxicating liquors, firearms, etc., into state prison. [Repealed.]
- § 181. Infringement of personal liberty or attempt to assume ownership of persons. Penalty.

**Officer refusing to receive or arrest parties charged with crime.**

§ 142. Every sheriff, coroner, keeper of a jail, constable, or other peace-officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Legislation § 142. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 241, § 100, which read: "§ 100. If any sheriff,

*coroner, keeper of a jail, constable, or other officer, shall willfully refuse to receive or arrest any person charged with a criminal offense, such sheriff, coroner, jailer, constable, or other officer so offending, shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail not exceeding five years."*

**Public administrator, neglect of duty or violation of duty by.**

§ 143. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

*Legislation § 143. Enacted February 14, 1872; based on Probate Act, Stats. 1851, p. 488, § 303, which read: "§ 303. For any willful misdemeanor in office, the public administrator may be indicted and fined in any sum not exceeding two thousand dollars, and removal from office."*

**Receiving fee or compensation for services rendered in arresting fugitives from justice.**

§ 144. Every person who violates any of the provisions of section fifteen hundred and fifty-eight is guilty of a misdemeanor.

*Legislation § 144. Enacted February 14, 1872.*

*"Provisions of § 1558." The section referred to relates to fees or compensation allowed persons for pursuing and securing the extradition of fugitives from justice.*

**Delaying to take person arrested before a magistrate.**

§ 145. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

*Legislation § 145. Enacted February 14, 1872; based on Field Draft, § 174, N. Y. Pen. Code, § 118.*

*Delay in taking defendant before magistrate: See post, § 825.*

**Making arrests, etc., without lawful authority.**

§ 146. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or

tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

Legislation § 146. Enacted February 14, 1872; identical with Field Draft, § 175, N. Y. Pen. Code, § 119.

#### **Inhumanity to prisoners.**

§ 147. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

Legislation § 147. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 240, § 88, which read: "§ 88. Every sheriff or jailer who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office."

#### **Resisting public officers in the discharge of their duties.**

§ 148. Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Legislation § 148. Enacted February 14, 1872; based on Field Draft, § 180, N. Y. Pen. Code, § 124; also based on Crimes and Punishment Act, Stats. 1850, p. 240, § 92, which read: "§ 92. If any person shall knowingly and willfully obstruct, resist, or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this state, or other person duly authorized, in serving, or attempting to serve, any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person duly authorized in serving, or executing, or attempting to serve or execute any order or process as aforesaid, or for having served, or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for a term not exceeding five years: Provided, any officer or person whatsoever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment." Crimes and Punishment Act, § 92, as amended by Stats. 1860, p. 125, § 1, read: "§ 92. If any person shall, knowingly and willfully, obstruct, resist, or oppose, any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this state, or other person duly authorized, in serving or attempting to serve any law process or order of any court, judge, or justice of the peace, or any other legal process whatever, or in making or

attempting to make any arrests, or shall assault or beat any such officer or person duly authorized, in serving or executing, or attempting to serve or execute any order or process, or to make any such arrests aforesaid, or for having served or executed, or attempted to serve and execute the same, or for having made or attempted to make such arrest, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for a term not exceeding five years; provided, any officer or person whatsoever, who may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment."

Citations. Cal. 59/370; 120/281.

Resisting officers: Ante, § 69.

#### Assaults, etc., by officers, under color of authority.

§ 149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Legislation § 149. Enacted February 14, 1872; based on Crimes and Punishment Act, § 92, as amended by Stats. 1860, p. 125, § 1, q. v., ante, Legislation § 148.

#### Refusing to aid officers in arrest, etc.

§ 150. Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

Legislation § 150. Enacted February 14, 1872; based on Field Draft, § 177, N. Y. Pen. Code, § 121; also based on Crimes and Punishment Act, Stats. 1850, p. 245, § 128, which read: "§ 128, Every male person above eighteen years of age who shall neglect or refuse to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons



who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars."

Act to authorize supervisors to pay expenses of posse comitatus: See post, Appendix, tit. "Supervisors."

§ 151. [Taking extrajudicial oaths. Repealed.]

Legislation § 151. 1. Enacted February 14, 1872. 2. Repealed by Code Amdts. 1873-74, p. 425.

§ 152. [Administering extrajudicial oaths. Repealed.]

Legislation § 152. 1. Enacted February 14, 1872. 2. Repealed by Code Amdts. 1873-74, p. 425.

**Compounding crimes.**

§ 153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life;

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

Legislation § 153. Enacted February 14, 1872; based on Field Draft, § 183, N. Y. Pen. Code, § 125; also based on Crimes and Punishment Act, Stats. 1850, p. 241, § 101, which read: "§ 101. Every person having a knowledge of the actual commission of any offense punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any

statute for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offense or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months: Provided, that this section shall not apply to those offenses which may lawfully be compromised by leave of court"; also based on Crim. Prac. Act, Stats. 1851, p. 240, § 257, which read: "§ 257. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or a reward or an agreement or understanding express or implied to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the persons guilty of the original offense have not been indicted or tried." The code commissioners say: "This section was compiled from § 101 of the Crimes and Punishment Act, and § 257 of the Criminal Practice Act (Stats. 1850, p. 229; Stats. 1851, p. 212), with the punishment graded in proportion to the enormity of the offense compounded. The language is nearly that of the New York Penal Code [Field Draft], § 183."

Citations. Cal. 108/676, 677.

Compromising certain offenses: Post, §§ 1377-1379.

#### **Debtor fraudulently concealing his property.**

§ 154. Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both.

Legislation § 154. Enacted February 14, 1872; based on Crime and Punishment Act, Stats. 1850, p. 246, § 134, which read: "§ 134. If any debtor shall fraudulently remove his property or effects out of this state, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment."

Citations. Cal. 108/354.

#### **Defendant fraudulently concealing his property.**

§ 155. Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property,

with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

**Legislation § 155.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 246, § 185, which read: "Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or shall with such intent remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section."

#### **Fraudulent pretenses relative to birth of infant.**

§ 156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years.

**Legislation § 156.** Enacted February 14, 1872; almost identical with Field Draft, § 212, N. Y. Pen. Code, § 151. The New York code commissioners say: "This is substantially the provision of 2 Rev. Stats., p. 676, § 51. The commissioners would have recommended the enactment of a more extended provision, which should forbid the holding out of a child as born of other than its true parents, were it not that such an enactment would render necessary a system of provisions regulating and legalizing the adoption of children. The subject of adoptions is one which the commissioners have under consideration, and some systematic provisions relative to it may perhaps be reported, but the topic does not come within the Penal Code."

#### **Substituting one child for another.**

§ 157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years.

Legislation § 157. Enacted February 14, 1872; almost identical with Field Draft, § 213, N. Y. Pen. Code, § 152. The New York code commissioners say: "Founded upon 2 Rev. Stats., p. 677, § 52. The changes introduced are two. The provisions of the Revised Statutes is [sic] limited to cases where the infant confided to the accused is under six years. The commissioners are of opinion that while the substitution may become less and less feasible with the advancing age of the child, it is not the less criminal, if perpetrated, because the child has passed the age of six; and they therefore omit the restriction. They also use the words 'substitutes or produces,' in place of 'substitutes and produces'; in order to embrace cases in which the child may not be exhibited in person to the parent or guardian."

#### **Common barratry defined. How punished.**

§ 158. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months and by fine not exceeding five hundred dollars.

Legislation § 158. Enacted February 14, 1872; based on Field Draft, § 190, N. Y. Pen. Code, § 132.

#### **What proof is required.**

§ 159. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Legislation § 159. Enacted February 14, 1872; identical with Field Draft, § 192, N. Y. Pen. Code, § 134.

#### **Advertising to procure divorce.**

§ 159a. Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section does not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

Legislation § 159a. 1. Added by Stats. 1891, p. 279, as § 159½, and then read: "Whoever advertises, prints, publishes, or circulates, or causes to be

advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind offering to procure, or to aid in procuring, any divorce, either in this state or elsewhere, shall be guilty of a misdemeanor. This act shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state." 2. Amended by Stats. 1893, p. 48, differing from the amendment of 1905 (the present section), having, (1) in first sentence, (a) "nullity" instead of "annulment" in both instances, and (b) "shall be" instead of "is" before "guilty of a misdemeanor," at end of sentence; (2) in final sentence. "This act" instead of "This section." 3. Amendment by Stats. 1901, p. 444, being identical with the amendment of 1905, although the code commissioners call it a new section; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 649.

### Misconduct by attorneys.

§ 160. Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,
  2. Willfully delays his client's suit with a view to his own gain; or,
  3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;
- Is guilty of a misdemeanor.

Legislation § 160. Enacted February 14, 1872; based on Field Draft, § 209, N. Y. Pen. Code, § 148. The New York code commissioners say: "As attorney or as counselor." In general throughout the code, the commissioners have used the word 'attorney,' as embracing all classes of legal practitioners, conformably to the existing law by which both the functions of the attorney and those of the counselor at law are united in the same person. But it has been held that although candidates for admission to the bar are now admitted as attorneys and as counselors at the same time, yet the offices are still distinct. (*Easton v. Smith*, 1 E. D. Smith, 818; *Brady v. Mayor* etc. of New York, 1 Sandf. 559.) As some of the acts prohibited in the above section might be committed by one acting only as a counselor, and who, though in fact also an attorney, had no retainer as such in the cause to which the misconduct related, the commissioners have declared the acts punishable in whichever capacity the defendant acts."

Disbarring attorneys: See Code Civ. Proc., § 287.

### Buying demands or suit by an attorney.

§ 161. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Pen. Code—§

**Legislation § 161.** Enacted February 14, 1872; identical with Field Draft, § 194, N. Y. Pen. Code, § 186.  
**Citations.** Cal. 68/81; 98/524; 148/527.

**Who may advertise.**

§ 161a. Any person other than a regularly licensed attorney who advertises himself as practicing or entitled to practice law in any court of justice is guilty of a misdemeanor.

**Legislation § 161a.** 1. Addition by Stats. 1901, p. 444; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 649, and then read: "Any person, other than a regularly licensed attorney, who advertises or holds himself out as practicing or entitled to practice law in any court of record, is guilty of a misdemeanor." 3. Amended by Stats. 1909, p. 247.

**Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.**

§ 162. Every attorney who directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

**Legislation § 162.** Enacted February 14, 1872; based on Field Draft, § 780, N. Y. Pen. Code, § 670.  
**Citations.** Cal. 69/59.

**Limitation of preceding section.**

§ 163. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

**Legislation § 163.** Enacted February 14, 1872; based on Field Draft, § 781, N. Y. Pen. Code, § 671.

Grand juror acting after challenge has been allowed.

§ 164. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Legislation § 164. Enacted February 14, 1872; identical with Field Draft, § 208, N. Y. Pen. Code, § 144.

Grand juror acting after allowance of challenge: See post, § 900.

Bribing boards of supervisors, etc.

§ 165. Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city and county, city, or public corporation, with intent to corruptly influence such member in his action on any matter or subject pending before, or which is afterward to be considered by, the body of which he is a member, and every member of any of the bodies mentioned in this section who receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity, is punishable by imprisonment in the state's prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised and forever disqualified from holding any public office or trust.

Legislation § 165. 1. Enacted February 14, 1872 (based on Crimes and Punishment Act, §§ 84, 85, as amended by Stats. 1883, pp. 645, 646, §§ 1, 2), and then read: "Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city, or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this state." 2. Amendment by Stats. 1901, p. 445; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 650; the code commissioner saying, "The word 'public' is inserted before the word 'corporation,' as the section was undoubtedly intended to apply to bodies and authorities of a public character. The words 'of which is afterward to be considered by' are inserted. The words 'upon any under-

standing that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity,' were not in the report of the original code commission, but were inserted as a committee amendment at a previous session. The added words 'in addition to said punishment' were likewise inserted by said committee."

Citations. Cal. 92/631; 110/872, 874.

#### **Criminal contempts.**

§ 166. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any court;

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this code.

Legislation § 166. Enacted February 14, 1872; based on Field Draft, § 201, N. Y. Pen. Code, § 143.

Citations. Cal. 64/438; 69/548; 99/861.



Contempt punishable as a crime: Post, § 657.

Contempts. Power of court to punish: Code Civ. Proc., §§ 128, 177, 178.

#### False certificates by public officers.

§ 167. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

Legislation § 167. 1. Enacted February 14, 1872; based on Field Draft, § 223, N. Y. Pen. Code, § 163. 2. Amendment by Stats. 1901, p. 445; unconstitutional: See note, § 5, ante.

#### Disclosing fact of indictment having been found.

§ 168. Every grand juror, district attorney, clerk, judge or other officer who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of an information or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Legislation § 168. 1. Enacted February 14, 1872; based on Field Draft, § 217, N. Y. Pen. Code, §§ 156, 157. The code commissioners say: "This section is founded upon §§ 223 and 224 of the Criminal Practice Act (Stats. 1851, p. 212), extended to embrace indictments as well as presentments, the reason of the rule applying with as much force to one as to the other." 2. Amendment by Stats. 1901, p. 445; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 650; the code commissioner saying, "'Presentment' is stricken out and 'information' inserted in its place, for the reason that under the constitution of 1879 there is no prosecution by presentment, that portion of this section (originally passed in 1872) having been superseded by the constitution."

Citations. Cal. 63/424.

#### Grand juror disclosing what transpired before the grand jury.

§ 169. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

Legislation § 169. Enacted February 14, 1872; identical with Field Draft, § 218, N. Y. Pen. Code, § 157.

**Maliciously procuring search-warrant.**

§ 170. Every person who maliciously and without probable cause procures a search-warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

Legislation § 170. Enacted February 14, 1872; based on Field Draft, § 220, N. Y. Pen. Code, § 159.

**Unauthorized communication with convict.**

§ 171. Every person, not authorized by law, who, without the permission of the warden or other officer in charge of any state prison, jail, or reformatory in this state, communicates with any convict or person detained therein, or brings therein or takes therefrom any letter, writing, literature, or reading-matter to or from any convict or person confined therein, is guilty of a misdemeanor.

Legislation § 171. 1. Enacted February 14, 1872 (based on Field Draft, § 221, N. Y. Pen. Code, § 160), and then read: "Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the state prison, communicates with any convict therein, or brings into or conveys out of the state prison any letter or writing to or from any convict, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 445; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 651; the code commissioner saying, "The scope of the section is broadened by the insertion of the words 'jail or reformatory in this state,' and the words 'literature or reading-matter.'"

**Bringing certain drugs and firearms into or near prisons.**

§ 171a. Any person, not authorized by law, who brings into any state prison, jail, or reformatory in this state, or within the grounds belonging or adjacent to any such institution, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, or any firearms, weapons or explosives of any kind, is guilty of a felony.

Legislation § 171a. 1. Addition by Stats. 1901, p. 445; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 651; the code commissioner saying, in his note to §§ 171a, 171b, 171c, 180a, " §§ 171a, 171b, and 171c contain the matter now contained in § 180a, [see post, Legislation §§ 180, 181,] and also a codification of the provisions of the statute of 1895, p. 92."

**Ex-convicts coming upon or near prison grounds.**

§ 171b. Every person who, having been previously convicted of a felony and confined in any state prison in this state, without the con-

sent of the warden or other officer in charge of any state prison or reformatory in this state, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, in the night-time, is guilty of a felony.

**Legislation § 171b.** 1. Addition by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 651. See ante, Legislation § 171a, for code commissioner's note. See also, post, Legislation §§ 180, 180a.

**Tramp, vagrant, etc., coming into prison or upon grounds belonging thereto.**

§ 171c. Any tramp, vagrant, or person who is a known associate of thieves, who comes into any state reformatory in this state, or upon the grounds belonging or adjacent thereto, and communicates with any of the inmates of such institution, without the consent of the superintendent or other person having charge thereof, or who visits or communicates with any paroled pupil or inmate of such institution, with a view to induce him to violate the conditions of his parole, or who induces such paroled pupil or inmate to leave the guardian under whom he has been placed by the superintendent or other head of such institution, is guilty of a misdemeanor.

**Legislation § 171c.** 1. Addition by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 651. See ante, Legislation § 171a, for code commissioner's note. See also, post, Legislation §§ 180, 180a.

**Sale of liquors near state buildings and grounds.**

§ 172. Every person who, within half a mile of the land belonging to this state upon which any state prison, or within nineteen hundred feet of the land belonging to this state upon which any reformatory, is situated, or within one mile of the grounds belonging to the University of California at Berkeley, or within one and one half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors, established or to be established by this state, or by the United States within this state, or within the state capitol or within the limits of the grounds adjacent and belonging thereto sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor.

**Legislation § 172.** 1. Enacted February 14, 1872 (based on Stats. 1855, p. 108, §§ 1, 2), and then read: "Every person who, within two miles of the land belonging to this state, upon which the state prison is situated,

keeps, sells, gives away, or offers for sale any vinous, malt, or spirituous liquors, is guilty of a misdemeanor." 2. Amended by Code Amends. 1875-76, p. 109, to read: "Every person who, within two miles of the land belonging to this state, upon which the state prison is situated, or within one mile of the insane asylum at Napa, or within one mile of the grounds belonging and adjacent to the University of California, in Alameda County, or in the State Capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor." 3. Amendment by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 652, to read: "Every person who, within two miles of the land belonging to this state upon which any state prison or reformatory is situated, or within one mile of the grounds belonging and adjacent to the University of California, or within one and one half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors established or to be established by this state or by the United States within this state, or within the State Capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor." See code commissioner's note, *infra*. 5. Amended by Stats. 1907, p. 121; the code commissioner saying, "The amendment of 1905 consolidated the provisions of the present § 172 with a codification of the statutes of 1875-74, p. 12; 1880, p. 80, and 1895, p. 161, relating to the State University, soldiers' homes, and State Capitol. There was no new legislation in the section, except that the former restriction as to the asylum for the insane at Napa was dropped altogether, and reformatories were placed within the same restriction as penitentiaries. The amendment of 1907 consisted in reducing the limit with reference to the state prison to half a mile and with reference to the reformatory to nineteen hundred feet, and inserting the words 'at Berkeley' after the words 'University of California,' so that there can be no possible question of construction as to what grounds of the university are referred to."

Citations. Cal. 61/487.

#### Sale of liquors near university.

§ 172a. Every person who, upon or within one and one half miles of the university grounds or campus, upon which are located the principal administrative offices of any university having an enrollment of more than one thousand students, more than five hundred of whom reside or lodge upon such university grounds or campus, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor. Provided, however, that the provisions of this act shall not apply to nor prohibit the sale of any of said liquors by any regularly licensed pharmacist who shall maintain a fixed place of business in said territory, upon the written prescription of a physician regularly licensed to practice medicine under the laws of the state of

California, when such prescription is dated by the physician issuing it, contains the name of the person for whom the prescription is written, and is filled for such person only and within forty-eight hours of its date. Provided further, that the provisions of this act shall not apply to nor prohibit the sale of any of said liquors for chemical or mechanical purposes.

Legislation § 172a. Added by Stats. 1909, p. 780.

#### **Importing foreign convicts.**

§ 173. Every captain, master of a vessel, or other person, who willfully imports, brings, or sends, or causes or procures to be brought or sent, into this state, any person who is a foreign convict of any crime which, if committed within this state, would be punishable therein (treason and misprision of treason excepted), or who is delivered or sent to him from any prison or place of confinement in any place without this state, is guilty of a misdemeanor.

Legislation § 173. Enacted February 14, 1872; based on Field Draft, § 214, N. Y. Pen. Code, §§ 153, 440; Stats. 1850, p. 202, §§ 1, 2.

#### **Bringing Chinese into the state.**

§ 174. Every person bringing to or landing within this state any person born either in the empire of China or Japan, or the islands adjacent to the empire of China, without first presenting to the commissioner of immigration evidence satisfactory to such commissioner that such person desires voluntarily to come into this state and is a person of good character, and obtaining from such commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months.

Legislation § 174. Enacted February 14, 1872. The code commissioners say: "This section embodies the material penal provisions of the act to prevent the kidnaping and importation of Mongolian females for criminal purposes, and the kindred act of March 18, 1870 (Stats. 1869-70, pp. 380 et seq.). The provisions of this section are broad enough to include every offense defined in either act."

#### **Separate and distinct prosecution.**

§ 175. Every individual person of the classes referred to in the two preceding sections, brought to or landed within this state contrary to

The provisions of such sections renders the person bringing or landing liable to a separate prosecution and penalty.

Legislation § 175. Enacted February 14, 1872.

#### Omission of duty by public officer.

§ 176. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Legislation § 176. Enacted February 14, 1872; based on Field Draft, § 215, N. Y. Pen. Code, § 154.

Citations. Cal. 47/130, 131; 84, 310.

#### Offenses, when misdemeanors.

§ 177. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

Legislation § 177. 1. Enacted February 14, 1872 (based on Field Draft, § 216, N. Y. Pen. Code, § 155), and then read: "Where the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor." 2. Amended by Code Amdts. 1873-74, p. 426.

Citations. Cal. 62/310.

#### § 178. [Officers of corporations not to employ Chinese. Repealed.]

Legislation § 178. 1. Added by Code Amdts. 1880, p. 1. 2. Repeal by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 652; the code commissioner saying in his notes to §§ 178, 179, "These sections were, in the circuit court of the United States, ninth judicial district, explicitly held to be in violation of the constitution of the United States, on May 22, 1880. (In re Parrott, 5 Pac. Coast L. J. 161.) They are now obsolete, and are, therefore, repealed. An ordinance in somewhat similar terms was also held unconstitutional in Ex parte Kerbeck, 85 Cal. 274."

#### § 179. [Corporations not to employ Chinese. Repealed.]

Legislation § 179. 1. Added by Code Amdts. 1880, p. 2. 2. Repeal by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 652. See ante, Legislation § 178, for code commissioner's note.

**County treasurer shall not receive private moneys on deposit.**

§ 180. Any county treasurer who shall accept, or allow, any deposit in the county treasury of moneys from any private and unofficial source, is guilty of misdemeanor, and shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than five hundred dollars and not more than five thousand dollars, or both such fine and imprisonment, in the discretion of the court, and, in addition thereto, shall forfeit his office.

Legislation § 180. Added by Stats. 1897, p. 56. Another section numbered 180 was added by Stats. 1899, p. 4 (the present §§ 171a, 171b, 171c, *v.*, *ante*). See post, Legislation § 180a.

**§ 180a. [Bringing narcotics, intoxicating liquors, firearms, etc., into state prisons. Repealed.]**

Legislation § 180a. 1. Added by Stats. 1899, p. 4, as § 180, and then read: "180. Any person, not authorized by law, who brings into either of the state prisons of the state of California, or any reformatories therein, or within the grounds of such institutions, any opium, morphine, cocaine, or other narcotics, or any intoxicating liquors of any kind whatever, or firearms, weapons, or explosives of any kind, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one nor more than five years, and shall be disqualified from holding any state office or position in the employ of this state." 2. Amended by Stats. 1901, p. 107, (1) renumbering the section 180a; (2) adding, after "grounds of such institutions," the words "or who brings into or passes into any jail within the state of California." 3. Repeal by Stats. 1901, p. 446; unconstitutional: See note, § 5, *ante*. 4. Repealed by Stats. 1905, p. 652. See *ante*, §§ 171a, 171b, 171c, and Legislation §§ 171a, 171b, 171c, 180.

**Infringement of personal liberty or attempt to assume ownership of persons. Penalty.**

§ 181. Every person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his custody, or under his power or control, or who

knowingly aids or assists in any manner any one thus offending, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Legislation § 181. Added by Stats. 1901, p. 830.

Citations. Cal. 84/472.

## CHAPTER VIII.

### Conspiracy.

§ 182. Criminal conspiracy defined and punishment fixed.

§ 183. No other conspiracies punishable criminally.

§ 184. Overt act, when necessary.

§ 185. Wearing mask or disguise.

#### **Criminal conspiracy defined and punishment fixed.**

§ 182. If two or more persons conspire:

One. To commit any crime;

Two. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;

Three. Falsely to move or maintain any suit, action, or proceeding;

Four. To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,

Five. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws;

—They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

Legislation § 182. 1. Enacted February 14, 1872; based on Field Draft, § 224, N. Y. Pen. Code, § 169; also based on Crimes and Punishment Act, Stats. 1850, p. 242, § 102, which read: "§ 102. If two or more persons shall conspire either to commit any offense; or falsely and maliciously to indict another for any offense; or to procure another to be charged or arrested for any such offense; or falsely to move or maintain any suit; or to cheat or defraud any person of any property by any means which, if executed, would amount to a cheat; or to obtain money or property by false pretenses; or to cheat or defraud any person of any property by any means which are in themselves criminal; or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than one year, or by a fine



not exceeding one thousand dollars." When enacted in 1872, § 182 differed from the amendment of 1873-74 (the present section), having (1) the word "or" at end of subds. 1, 2, and 3; (2) after subd. 3 the section reading, "4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses; or, 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws; —They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars."

2. Amended by Code Amdts. 1873-74, p. 426.

Citations. Cal. 105/268; 118/460.

Evidence on trial for conspiracy: See post, § 1104.

#### **No other conspiracies punishable criminally.**

§ 183. No conspiracies, other than those enumerated in the preceding section, are punishable criminally.

Legislation § 183. Enacted February 14, 1872 (N. Y. Pen. Code, § 170); based on Crimes and Punishment Act, Stats. 1850, p. 242, § 103.

#### **Overt act, when necessary.**

§ 184. No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to such agreement.

Legislation § 184. Enacted February 14, 1872; based on Field Draft, § 226, N. Y. Pen. Code, § 171; Crimes and Punishment Act, Stats. 1850, p. 242, § 104.

Citations. Cal. 105/264.

#### **Wearing mask or disguise.**

§ 185. It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of:

One. Evading or escaping discovery, recognition, or identification in the commission of any public offense.

Two. Concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

Legislation § 185. Added by Code Amdts. 1873-74, p. 426.

## TITLE VIII.

## Crimes against the Person.

- Chapter I. Homicide. §§ 187-199.
- II. Mayhem. §§ 203, 204.
- III. Kidnaping. §§ 207-209.
- IV. Robbery. §§ 211-214.
- V. Attempts to Kill. §§ 216-219.
- VI. Assaults with Intent to Commit Felony, Other than Assaults with Intent to Murder. §§ 220-222.
- VII. Duels and Challenges. §§ 225-232.
- VIII. False Imprisonment. §§ 236, 237.
- IX. Assault and Battery. §§ 240-246.
- X. Libel. §§ 248-259.

## CHAPTER I.

## Homicide.

- § 187. Murder defined.
- § 188. Malice defined.
- § 189. Degrees of murder.
- § 190. Punishment of murder.
- § 191. Petit treason abolished.
- § 192. Manslaughter defined. Voluntary and involuntary manslaughter.
- § 193. Punishment of manslaughter.
- § 194. Deceased must die within a year and a day.
- § 195. Excusable homicide.
- § 196. Justifiable homicide by public officers.
- § 197. Justifiable homicide by other persons.
- § 198. Bare fear not to justify killing.
- § 199. Justifiable and excusable homicide not punishable.

Code commissioners' note to Chapter I. "Sections 32 and 41 of the Crimes and Punishment Act of 1850 properly belong in the Criminal Practice Act, and the commission have so placed them."

**Murder defined.**

§ 187. Murder is the unlawful killing of a human being, with malice aforethought.

Legislation § 187. Enacted February 14, 1872. The code commissioners say: "The original section [of the Crimes and Punishment Act] reads as fol-

lows: 'Murder is the unlawful killing of a human being, with malice aforethought, [[either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.']] [The code commissioners, in their note, italicized the words inclosed in double brackets.] (Stats. 1850, p. 231, § 19.) 'Express or implied'—these words are omitted, for they are included within the term 'malice,' and by the next section it is declared that malice, which is the ingredient of murder, may be expressed or implied. The sentence italicized is omitted, because it is surplusage. Every unlawful killing with malice aforethought being murder, it follows that any such killing effected by any means is murder."

Citations. Cal. 58/268, 269; 68/28, 186, 424; 65/212, 285; 68/362; 86/240; 99/3; 122/141; 187/591, 592; 142/841, 856; 145/170, 171. App. 1/248; 2/285; 8/615.

Degrees of murder: Post, § 189.

#### Malice defined.

§ 188. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow-creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Legislation § 188. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 231, § 20, and part of § 21 of the same act as amended by Stats. 1856, p. 219.

Citations. Cal. 58/268, 269; 65/235; 71/3, 6; 72/618; 76/285; 98/566; 120/202; 122/141; 128/305; 135/848; 189/164; 145/170; 148/205. App. 1/29, 248; 2/285.

Malice, express or implied: See ante, § 7, subd. 4.

#### Degrees of murder.

§ 189. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree.

Legislation § 189. 1. Enacted February 14, 1872 (based on Crimes and Punishment Act, § 21, as amended by Stats. 1856, p. 219), and then read as at present, down to the word "robbery," thereafter proceeding, "or burglary, is murder of the first degree; and all other kinds of murder are of the second degree." 2. Amended by Code Amdts. 1878-74, p. 427.

Citations. Cal. 57/94; 58/268, 269; 59/601; 63/424; 71/6; 76/285; 80/125; 81/567; 86/240; 88/271; 99/3; 121/847; 122/141; 141/231; 145/170; 147/273; 149/262. App. 6/487; 8/615.

**Infactment:** See post, § 963.

**Burden of proving justification or excuse:** See post, § 1105.

#### **Punishment of murder.**

§ 190. Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the jury trying the same; or, upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years.

**Legislation § 190.** 1. Enacted February 14, 1872 (based on Crimes and Punishment Act, Stats. 1850, p. 231, § 21), and then read: "Every person guilty of murder in the first degree shall suffer death, and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years." 2. Amended by Code Amdts. 1872-74, p. 457.

**Citations.** Cal. 49 178, 185; 58 268, 269; 59 357, 432; 63/170; 67/114; 69/176, 177, 179; 90 197; 105 495; 122 551; 134 258. App. 8/109.

**Death penalty, how executed.** Whenever, in a proper case, the judgment of the court directs the death of the defendant, the punishment in this state is inflicted, "by hanging the defendant by the neck until he is dead"; Post, §§ 1228, 1229.

**Imprisonment for life:** See post, § 671.

#### **Petit treason abolished.**

§ 191. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

**Legislation § 191.** 1. Enacted February 14, 1872; based on Field Draft, § 239, N. Y. Pen. Code, § 182; also based on Crimes and Punishment Act, Stats. 1850, p. 233, § 89, which read: "§ 89. The distinction between petit treason and murder is abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and, if convicted, punished accordingly." 2. Repeal by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante.

#### **Manslaughter defined. Voluntary and involuntary manslaughter.**

§ 192. Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

**Legislation § 192.** Enacted February 14, 1872. The code commissioners say: "This section embodies the material portions of §§ 22, 23, 24, and 25 of the Crimes and Punishment Act of 1850. (Stats. 1850, p. 229.)"

**Citations.** Cal. 58/268, 269; 65/212; 72/620; 80/125; 118/156; 145/721; 149/264; (subd. 2) 129/552. App. 5/295; 8/615, 616.

#### **Punishment of manslaughter.**

§ 193. Manslaughter is punishable by imprisonment in the state prison not exceeding ten years.

**Legislation § 193.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 231, § 26, which read: "§ 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the state prison for a term not exceeding three years, and fined not exceeding five thousand dollars."

#### **Deceased must die within a year and a day.**

§ 194. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

**Legislation § 194.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 232, § 27, which had the words "In order" before "to make the killing," at beginning of section.

**Citations.** Cal. 58/268, 269.

#### **Excusable homicide.**

§ 195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous

weapon used, and when the killing is not done in a cruel or unusual manner.

**Legislation § 195.** 1. Enacted February 14, 1872. (N. Y. Pen. Code, § 208.) See post, Legislation § 197, for code commissioners' note. 2. Amendment by Stats. 1901, p. 446; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 49/428; 58/268, 269; 80/165.

**Burden of proving homicide excusable:** Post, § 1105.

#### **Justifiable homicide by public officers.**

§ 196. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

**Legislation § 196.** Enacted February 14, 1872; based on Field Draft, § 261, N. Y. Pen. Code, § 204. See post, Legislation § 197, for code commissioners' note.

**Citations.** Cal. 58/268, 269.

**As to escapes,** see ante, § 105.

**Burden of proving homicide justifiable:** Post, § 1105.

#### **Justifiable homicide by other persons.**

§ 197. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such

person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

**Legislation § 197.** Enacted February 14, 1872; based on Field Draft, § 262, N. Y. Pen. Code, § 205. The code commissioners say: "The three preceding sections are based upon §§ 29, 81, 82, 83, 84, and 85 of the Crimes and Punishment Act of 1850. (Stats. 1850, p. 229.) The commission have modified the language, making it accord, in many respects, with that of the New York Penal Code, [Field Draft,] §§ 260, 261, and 262. The legal effect, however, has not been changed. They have also kept in view, for the purposes of classification, the common-law distinction between justifiable and excusable homicide."

**Citations.** Cal. 58/268, 269; 60/74; 61/187, 546; 65/188, 184; 67/649; 82/40; 93/488; 106/681; 138/160; 141/239; (subd. 1) 118/448; (subd. 2) 89/170; 109/461; 111/626; 117/190; (subd. 8) 58/250; 67/650; 70/523; 74/645; 93/488; 117/190; 118/269. App. 6/488; 8/605.

**Burden of proving homicide justifiable:** See post, § 1105.

**Defense of habitation:** See post, § 198.

**Lawful resistances, by whom and when may be made:** See post, §§ 692-694.

**Duty to assist in arrest of felon:** See post, § 839.

#### **Bare fear not to justify killing.**

§ 198. A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

**Legislation § 198.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 232, § 30, which read: "§ 30. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person,

and that the party killing really acted under the influence of those fears, and not in a spirit of revenge."

Citations. Cal. 58/268, 269; 61/546; 65/288; 118/448. App. 8/605.

#### Justifiable and excusable homicide not punishable.

§ 199. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Legislation § 199. Enacted February 14, 1872, reading the same as the Crimes and Punishment Act, Stats. 1850, p. 282, § 36, except that it has the word "must" instead of "shall."

## CHAPTER II.

### Mayhem.

§ 203. Mayhem defined.

§ 204. Mayhem, how punishable.

#### Mayhem defined.

§ 203. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

Legislation § 203. 1. Enacted February 14, 1872; based on Field Draft, § 268, N. Y. Pen. Code, § 206; also based on Crimes and Punishment Act, § 46, as amended by Stats. 1856, p. 219, § 4, which read: "§ 46. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily or of purpose put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the state prison for a term not to exceed fourteen years." The code commissioners say: "The commission have modified the language of the act of 1856 (Stats. 1856, p. 219), defining mayhem, but the section has not been changed in substance." 2. Amended by Code Amdts. 1878-74, p. 427.

Citations. Cal. 62/542; 98/565, 567; 105/678.

#### Mayhem, how punishable.

§ 204. Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years.

Legislation § 204. Enacted February 14, 1872; based on Crimes and Punishment Act, § 46, as amended by Stats. 1856, p. 219, § 4, q.v., ante, Legislation, § 203.



## CHAPTER III.

## Kidnaping.

§ 207. Kidnaping defined.

§ 208. Punishment of kidnaping.

§ 209. Penalty for kidnaping for purposes of extortion or robbery.

## Kidnaping defined.

§ 207. Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county, or into another part of the same county, or who forcibly takes or arrests any person, with a design to take him out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free-will and consent of such persuaded person; and every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnaping.

Legislation § 207. 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 211); based on Crimes and Punishment Act, Stats. 1850, p. 234, §§ 53, 54, 55, which read: "§ 53. Kidnaping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country, and sending or taking him or her unto another. § 54. Every person who shall forcibly steal, take, or arrest, any man, woman, or child, whether white, black, or colored, or any Indian in this state, and carry him or her into another county, state, or territory, or who shall forcibly take or arrest any person or persons whatsoever with a design to take him or her out of this state, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnaping, and be punished by imprisonment in the state prison for any term not less than one nor more than ten years for each person kidnaped or attempted to be kidnaped. § 55. Every person who shall hire, persuade, entice, decoy, or seduce by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or

to the use of another without the free will and consent of such negro, mulatto, or colored person, shall be deemed to have committed the crime of kidnaping, and upon conviction thereof shall be punished as in the next preceding section specified." 2. Amendment by Stats. 1901, p. 447; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 653, (1) adding "or into another part of the same county," and (2) at end of section, before the words "is guilty of kidnaping," adding the words beginning "and every person"; the code commissioner saying of the additions, "The advisability of the first change is shown by the decision of the supreme court in *Ex parte Keil*, 85 Cal. 309, where it was held that the forcible removal of a person from San Pedro, Los Angeles County, to Santa Catalina Island, in the same county, did not constitute kidnaping."

Citations. Cal. 85/310; 89/150.

Kidnaping for purpose of slavery: See post, § 784.

#### **Punishment of kidnaping.**

§ 208. Kidnaping is punishable by imprisonment in the state prison not less than one nor more than ten years.

Legislation § 208. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 234, § 54, q. v., ante, Legislation § 207.

#### **Penalty for kidnaping for purposes of extortion or robbery.**

§ 209. Every person who maliciously, forcibly, or fraudulently takes or entices away any person with intent to restrain such person and thereby to commit extortion or robbery, or exact from the relatives or friends of such person any money or valuable thing, is guilty of a felony, and shall be punished therefor by imprisonment in the state's prison for life, or any number of years not less than ten.

Legislation § 209. Added by Stats. 1901, p. 98.

### **CHAPTER IV.**

#### **Robbery.**

§ 211. Robbery defined.

§ 212. What fear may be an element in robbery.

§ 213. Punishment of robbery.

§ 214. Robbery; going upon railroad trains, or doing any act thereon, for purpose of.

#### **Robbery defined.**

§ 211. Robbery is the felonious taking of personal property in possession of another, from his person or immediate presence, against his will, accomplished by means of force or fear.

**Legislation § 211.** Enacted February 14, 1872; based on Field Draft, § 280, N. Y. Pen. Code, § 224; also based on Crimes and Punishment Act, § 59, as amended by Stats. 1856, p. 220, § 6, which read: "§ 59. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the state prison for a term not less than one year, and which may extend to life."

**Citations.** Cal. 53/59; 56/80; 59/489; 67/422; 75/99; 80/207; 100/439; 116/586; 118/26; 141/490, 491, 492; 146/143. App. 2/386; 6/753; 7/482.

**What fear may be an element in robbery.**

§ 212. The fear mentioned in the last section may be either:

One. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family;

or,

Two. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

**Legislation § 212.** 1. Enacted February 14, 1872 (identical with Field Draft, § 283, N. Y. Pen. Code, § 225), the introductory paragraph and subd. 1 then reading, "The fear which constitutes robbery may be either—1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his, or member of his family; or," subd. 2 reading as at present. 2. Amended by Code Amdts. 1873-74, p. 427.

**Citations.** Cal. 146/143. App. 5/334.

**Punishment of robbery.**

§ 213. Robbery is punishable by imprisonment in the state prison not less than one year.

**Legislation § 213.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 59, as amended by Stats. 1856, p. 220, § 6, q. v., ante, Legislation § 211.

**Citations.** Cal. 59/441; 60/110; 61/187; 69/605; 118/93; 138/161.

...; going upon railroad trains, or doing any act thereon, for purpose of.

hereon, for Every person who goes upon or boards any railroad train, engine, with the intention of robbing any passenger or other person in such train, car or engine, of any personal property thereon in possession or care or under the control of any such passenger or person, or who interferes in any manner with any switch, or

rail, sleeper, viaduct, culvert, embankment, structure or appliance pertaining to or connected with any railroad, or places any dynamite or other explosive substance or material upon or near the track of any railroad, or who sets fire to any railroad bridge or trestle, or who shows, masks, extinguishes or alters any light or other signal, or exhibits or compels any other person to exhibit any false light or signal, or who stops any such train, car or engine, or slackens the speed thereof, or who compels or attempts to compel any person in charge or control thereof to stop any such train, car or engine, or slackens the speed thereof, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or charge or under the control of any such passenger or other person, is guilty of a felony.

**Legislation § 214.** 1. Addition by Stats. 1901, p. 447; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 653; the code commissioner saying in his note to §§ 214, 218, 219, " § 218 has been broken up into three sections. In view of the criticism passed by the supreme court in the case of *People v. Thompson*, 111 Cal. 242, upon § 218, and the suggestion of that court that the section be revised, there have been taken out of that section the provisions regarding robbery and the same have been amplified and made a new section, numbered 214, to be placed in Chapter IV, of Title VII, of Part I. In the new section the punishment is not prescribed as death or imprisonment for life at the option of the jury, as in § 218; but the grade of the offense is fixed at felony simply, it having been found that the severity of the punishment results in failure to secure convictions. § 218 as amended provides only for attempted wrecking or derailment of railroad trains, and fixes the grade of the offense as felony simply, the matters formerly in the section regarding an accomplished or consummated wrecking or derailment being left to § 219, and the provisions regarding robbery being provided for in § 214. § 219 contains the matter now in § 218 regarding an accomplished or consummated wrecking or derailment. The punishment is left at death or imprisonment for life, at the option of the jury, as now provided in § 218. In short, these three sections split up § 218 in the manner suggested by Judge Garoutte in *People v. Thompson*, 111 Cal. 242, and modify the penalty of train-wrecking where no death has occurred, so as to preclude failures to convict on account of the severity of the penalty."

CHAPTER V.  
Attempts to Kill.

- § 216. Administering poison.
- § 217. Assault with intent to commit murder.
- § 218. Train-wrecking, intention of, punishment for.
- § 219. Railroad trains, when wrecked; punishment.

**Administering poison.**

§ 216. Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the state prison not less than ten years.

**Legislation § 216.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 45, as amended by Stats. 1861, p. 588, § 1, which read: "§ 45. Every person who shall willfully and maliciously administer, or cause to be administered, to, or taken by, any person, any poison, or other noxious, or destructive, substance, or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the state prison, for a term not less than ten years, and which may be extended to life; and every person who shall administer, or cause to be administered, or taken, or shall take, any medicinal substances, or shall use, or cause to be used, any instruments whatever, with the intention to procure abortion, or miscarriage, of any woman then being with child, and any woman who shall knowingly cause to be used upon herself, or consent to the use of such instruments upon herself, with the intent to produce abortion, or miscarriage, when with child, and shall be thereof duly convicted, shall be punished by imprisonment in the state prison, for a term not less than two years, nor more than five years; provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce abortion, or miscarriage, of any woman in order to save her life, nor shall any woman be affected by said last clause, when her physician deems it necessary to have said abortion, or miscarriage, produced, in order to save her life, nor shall such physician, or surgeon, be arrested, indicted, or put on trial, or convicted, by the testimony of such woman alone."

**Citations.** Cal. 58/148; 54/54.

**Administering stupefying drugs:** Post, § 222.

**Assault with intent to commit murder.**

§ 217. Every person who assaults another with intent to commit murder, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Legislation § 217. Enacted February 14, 1872; based on Crimes and Punishment Act, § 50, as amended by Stats. 1855, p. 106, § 2, which read: "§ 50. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the state prison for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another, a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the state prison, not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment."

Citations. Cal. 80/44; 99/232. App. 8/752.

Assault with intent to commit other felonies: Post, § 221.

Assault with deadly weapon: Post, § 245.

#### **Train-wrecking, intention of, punishment for.**

§ 218. Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such train, car or engine, or who unlawfully sets fire to any railroad bridge or trestle, over which any such train, car or engine must pass, with the intention of wrecking such train, car or engine, is guilty of a felony.

Legislation § 218. 1. Added by Stats. 1891, p. 283, and then read: "Every person who shall unlawfully throw out a switch, remove a rail, or place any obstruction on any railroad in the state of California, with the intention of derailing any passenger, freight, or other train, or who shall unlawfully board any passenger train with the intention of robbing the same, or who shall unlawfully place any dynamite or other explosive material, or any other obstruction, on the track of any railroad in the state of California, with the intention of blowing up or derailing any passenger, freight, or other train, or who shall unlawfully set fire to any railroad bridge or trestle, over which any passenger, freight, or other train must pass, with the intent of wrecking said train, upon conviction shall be adjudged guilty of felony, and shall be punished with death or imprisonment in the state prison for life, at the option of the jury trying the case." 2. Amendment by Stats. 1901, p. 447; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 654.

Citations. App. 1/204.

Placing obstructions on track: See post, § 587.

**Railroad trains, when wrecked; punishment.**

§ 219. Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine and thus derails the same, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such train, car or engine and thus blows up or derails the same, or who unlawfully sets fire to any railroad bridge or trestle over which any such train, car or engine must pass with the intention of wrecking such train, car or engine, and thus wrecks the same, is guilty of a felony and punishable with death or imprisonment in the state prison for life at the option of the jury trying the case.

Legislation § 219. Added by Stats. 1905, p. 655.

Citations. Cal. 111/244.

**CHAPTER VI.****Assaults with Intent to Commit Felony, Other than Assaults with Intent to Murder.**

§ 220. Assault with intent to commit rape.

§ 221. Other assaults.

§ 222. Administering stupefying drugs.

**Assault with intent to commit rape.**

§ 220. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Legislation § 220. Enacted February 14, 1872; based on Crimes and Punishment Act, § 50, as amended by Stats. 1855, p. 106, § 2, q.v., ante, Legislation § 217.

Citations. Cal. 58/629; 65/299; 98/583; 98/128; 106/214; 109/277; 119/886; 186/524; 143/684. App. 5/655.

Rape: See post, § 261.

**Other assaults.**

§ 221. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit mur-

der, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

Legislation § 221. Enacted February 14, 1872; based on Field Draft, § 291, N. Y. Pen. Code, § 218.

Citations. Cal. 61/622.

Assault generally: Post, § 240.

Assault to murder: Ante, § 217.

Assault to commit rape: Ante, § 220.

Assault with deadly weapon: Post, § 245.

### Administering stupefying drugs.

§ 222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Legislation § 222. Enacted February 14, 1872; based on Consol. Stats. of Canada, p. 955, § 19.

Administering poison: Ante, § 216.

## CHAPTER VII.

### Duels and Challenges.

§ 225. Duel defined.

§ 226. Punishment for fighting a duel, when death ensues.

§ 227. Punishment for fighting a duel, although death does not ensue.

§ 228. Persons fighting duels, etc., disqualified from holding office, etc.

§ 229. Posting for not fighting.

§ 230. Duties of officers to prevent duels.

§ 231. Leaving the state with intent to evade laws against dueling.

§ 232. Witness's privilege.

Code commissioners' note to Chapter VII. "The sections relating to duels are founded upon the provisions of an act of 1855 (Stats. 1855, p. 152, § 1) and of §§ 43 and 44 of the Crimes and Punishment Act of 1850, and §§ 293, 294, 300, 301, and 303 of the New York Penal Code [Field Draft]. No provision has ever been made for carrying into effect the constitutional provisions on the subject, and although fighting by previous appointment, without the use of deadly weapons, was by the act of 1850 (Stats. 1850, p. 229), made a felony, yet there was no punishment affixed to the offense of dueling, unless death ensued. The commission have supplied these omissions. Sections two and three of the act of 1855, giving remedies by action for injuries, etc., arising from dueling, are inserted in the Civil Code."



**Duel defined.**

§ 225. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

Legislation § 225. Enacted February 14, 1872. See ante, Code commissioners' note to Chapter VII.

**Punishment for fighting a duel, when death ensues.**

§ 226. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the state prison not less than one nor more than seven years.

Legislation § 226. Enacted February 14, 1872. See ante, Code commissioners' note to Chapter VII.

**Punishment for fighting a duel, although death does not ensue.**

§ 227. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the state prison or in the county jail not exceeding one year.

Legislation § 227. 1. Enacted February 14, 1872 (see ante, Code commissioners' note to Chapter VII), and then read: "Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the state prison not exceeding one year." 2. Amended by Code Amdts. 1873-74, p. 428. 3. Amendment by Stats. 1901, p. 443; unconstitutional: See note, § 5, ante.

**Persons fighting duels, etc., disqualified from holding office, etc.**

§ 228. Any citizen of this state who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment, upon conviction.

Legislation § 228. 1. Enacted February 14, 1872 (based on Const. 1849, art. xi, § 2; see ante, Code commissioners' note to Chapter VII), and then read: "Every person guilty of fighting a duel, or who sends or accepts a challenge to fight a duel, or who acts as a second therein, is forever disqualified from holding any office, or from exercising the elective franchise in this state." 2. Amended by Code Amdts. 1873-74, p. 428, to read: "Every person who fights a duel, or who sends or accepts a challenge to fight a duel, shall, in addition to the punishment prescribed in the last section, be forever dis-

qualified from holding any office, or from exercising the elective franchise in this state, and shall be declared so disqualified in the judgment upon conviction." 8. Amended by Code Amdts. 1880, p. 8.

Disqualifications: See Const., art. xx, § 2.

Remedies by action for injuries arising from duelling: See Civ. Code, §§ 8847, 8848.

#### **Posting for not fighting.**

§ 229. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Legislation § 229. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 283, § 48 (see ante, Code commissioners' note to Chapter VII), which read: "§ 48. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the county jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars."

#### **Duties of officers to prevent duels.**

§ 230. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

Legislation § 230. Enacted February 14, 1872. See ante, Code commissioners' note to Chapter VII.

#### **Leaving the state with intent to evade laws against duelling.**

§ 231. Every person who leaves this state with intent to evade any of the provisions of this chapter, and to commit any act out of this state such as is prohibited by this chapter, and who does any act, although out of this state, which would be punishable by such provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

Legislation § 231. Enacted February 14, 1872. See ante, Code commissioners' note to Chapter VII.

Leaving state to evade statute against dueling: See post, § 780.

#### Witness's privilege.

§ 232. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

Legislation § 232. Enacted February 14, 1872. See ante, Code commissioners' note to Chapter VII.

### CHAPTER VIII.

#### False Imprisonment.

§ 236. False imprisonment defined.

§ 237. False imprisonment, how punished.

#### False imprisonment defined.

§ 236. False imprisonment is the unlawful violation of the personal liberty of another.

Legislation § 236. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 284, § 52 (first clause), q.v., post, Legislation § 237.

Citations. Cal. 73/256; 77/570, 571; 85/312. App. 5/117.

Reconfining person discharged on habeas corpus: Post, § 363.

#### False imprisonment, how punished.

§ 237. False imprisonment is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than one year, or by both. If such false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison for not less than one nor more than ten years.

Legislation § 237. 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 284, § 52, which read: "§ 52. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any per-

son convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the county jail for a term not exceeding one year." When enacted in 1872, § 237 contained only the first sentence of the present amendment; and then (1) had the words "five thousand dollars" instead of "five hundred dollars," and (2) did not have the word "by" before "both," at end of section. 2. Amended by Stats. 1901, p. 58.

Citations. Cal. 85/812.

## CHAPTER IX.

### Assault and Battery.

- § 240. Assault defined.
- § 241. Assault, how punished.
- § 242. Battery defined.
- § 243. Battery, how punished.
- § 244. Assaults with caustic chemicals.
- § 245. Assaults with deadly weapons.
- § 246. Death penalty for assault by life convict.

#### Assault defined.

§ 240. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Legislation § 240. Enacted February 14, 1872; identical with Crimes and Punishment Act, Stats. 1850, p. 234, § 49, and with the first clause of the same section as amended by Stats. 1856, p. 220, § 5. The code commissioners cite 8 Cal. 547; 9 Cal. 259. See post, Legislation § 241.

Citations. Cal. 59/630; 61/621; 65/212; 66/367; 69/604; 70/468; 77/636; 119/385, 386; 145/140; 151/676. App. 5/655.

#### Assault, how punished.

§ 241. An assault is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Legislation § 241. Enacted February 14, 1872; based on Crimes and Punishment Act, § 49, as amended by Stats. 1856, p. 220, § 5 (second clause), the first words of which read, "and every person convicted thereof, shall be fined in a sum not exceeding," the remainder of the clause reading the same as the present section. See ante, Legislation § 240.

Citations. Cal. 61/622; 71/624; 88/580.

Assault with deadly weapon: Post, § 245.

Assault with intent to commit rape or crime against nature: Ante, § 220.

Assault with intent to rob, to commit mayhem, or grand larceny: See ante, § 220.

Assault to murder: See ante, § 217.

Jurisdiction of police court over assault: See Pol. Code, § 4426.

#### Battery defined.

§ 242. A battery is any willful and unlawful use of force or violence upon the person of another.

Legislation § 242. Enacted February 14, 1872; identical with Field Draft, § 305. Crimes and Punishment Act, Stats. 1850, p. 234, § 51, read: "Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year."

Citations. Cal. 61/622; 65/213.

#### Battery, how punished.

§ 243. A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both.

Legislation § 243. 1. Enacted February 14, 1872 (based on Crimes and Punishment Act, Stats. 1850, p. 234, § 51, q.v., ante, Legislation § 242), and then read: "A battery is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year." 2. Amended by Code Amdts. 1873-74, p. 428, adding "or an assault and battery." 3. Amended by Code Amdts. 1875-76, p. 110, to read: "A battery is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or if committed upon the wife of the assailant, it shall be in the discretion of the court to punish the offender by the infliction of not less than twenty-one lashes on the bare back, to be administered by the sheriff of the county or any constable of the township." 4. Amended by Stats. 1881, p. 11.

Citations. Cal. 60/498; 61/622; 65/156, 218.

#### Assaults with caustic chemicals.

§ 244. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Legislation § 244. Enacted February 14, 1872; based on Stats. 1867-68, p. 194, § 1.

Citations. Cal. 106/140.

Pen. Code—8

**Assaults with deadly weapons.**

§ 245. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

**Legislation § 245.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, § 50, as amended by Stats. 1855, p. 106, § 2, q.v., ante, Legislation § 217. The code commissioners say: "Slight verbal alterations have been made, but no substantial change." When enacted in 1872, § 245 read: "Every person who, with intent to do bodily harm, and without just cause or excuse, or when no considerable provocation appears, or when the circumstances show an abandoned and malignant heart, commits an assault upon the person of another with a deadly weapon, instrument, or other thing, is punishable by imprisonment in the state prison not exceeding two years, or by fine not exceeding five thousand dollars, or by both." 2. Amended by Code Amdts. 1873-74, p. 428.

**Citations.** Cal. 53/428; 61/488, 622; 64/342; 65/213, 475, 541, 542; 70/2; 73/305; 81/119, 651; 99/232; 116/686; 118/339; 125/343, 344; 126/681; 141/582. App. 1/209.

**Death penalty for assault by life convict.**

§ 246. Every person undergoing a life sentence in a state prison of this state, who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable with death.

**Legislation § 246.** Added by Stats. 1901, p. 6.

**Citations.** Cal. 153/60, 61; 154/244, 246. App. 1/199, 200, 203, 208, 209, 212.

## CHAPTER X.

## Libel.

- § 248. Libel defined.
- § 249. Punishment of libel.
- § 250. Malice presumed.
- § 251. Truth may be given in evidence. Jury to determine law and fact.
- § 252. Publication defined.
- § 253. Liability of editors and publishers.
- § 254. Publishing a true report of public official proceedings privileged.
- § 255. Extent of privilege.
- § 256. Other privileged communications.
- § 257. Threatening to publish libel. Offer to prevent publication, with intent to extort money.
- § 258. Publishing of caricatures and cartoons unlawful.
- § 259. Newspaper articles of personal character must be signed. Penalty for violation. Name of author of book or news agency sufficient.

**Libel defined.**

§ 248. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule.

**Legislation § 248.** 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 242); based on Crimes and Punishment Act, Stats. 1850, p. 244, § 120, first clause, which had the words "or her" after "to expose him." When enacted in 1872, § 248 did not contain (1) the word "writing" before "printed," nor (2) the words "or alleged" before "defects." 2. Amended by Code Amdts. 1873-74, p. 428.

**Citations.** Cal. 78/122; 189/119.

**Libel, defined:** See Civ. Code, § 45.

**Punishment of libel.**

§ 249. Every person who willfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year.

**Legislation § 249.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 244, § 120 (see ante, Legislation § 248), which, after the first clause, read, "every person, whether the writer or the publisher, convicted of the offense, shall be fined in a sum not exceeding five

thousand dollars, or imprisonment in the county jail not exceeding one year. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact."

#### **Malice presumed.**

§ 250. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Legislation § 250. Enacted February 14, 1872.

Malice, defined: See ante, § 7, subd. 4.

#### **Truth may be given in evidence. Jury to determine law and fact.**

§ 251. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

Legislation § 251. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 244, § 120, q. v., ante, Legislation §§ 248, 249.

Constitutional provision is the same: Const., art. i, § 9.

Jury determines law and fact in libel: See post, §§ 1125, 1126.

#### **Publication defined.**

§ 252. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

Legislation § 252. Enacted February 14, 1872. (N. Y. Pen. Code, § 245.)

The code commissioners cite 6 Ga. 276.

Citations. Cal. 122/93, 94.

#### **Liability of editors and publishers.**

§ 253. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

Legislation § 253. Enacted February 14, 1872. (N. Y. Pen. Code, § 246.)

Constitutional provisions: See Const., art. i, § 9.



**Publishing a true report of public official proceedings privileged.**

§ 254. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Legislation § 254. Enacted February 14, 1872. (N. Y. Pen. Code, § 247.)

**Extent of privilege.**

§ 255. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Legislation § 255. Enacted February 14, 1872.

**Other privileged communications.**

§ 256. A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Legislation § 256. Enacted February 14, 1872. (N. Y. Pen. Code, § 253.)

**Threatening to publish libel. Offer to prevent publication, with intent to extort money.**

§ 257. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

Legislation § 257. Enacted February 14, 1872. (N. Y. Pen. Code, § 254.) The code commissioners say: "The commissioners have introduced several sections taken from the New York Penal Code [Field Draft] (sections 811, 813, 814, 815, 816, 817, and 818), the justice of which will be obvious to all. Publishers of newspapers are often called upon to determine, at a few moments' notice, whether an article is privileged or not. It is but a matter of simple justice, alike to them and to the citizen, that the leading rules of the law governing libelous publications should be embodied in a statute to which ready reference may be had."

**Publishing of caricatures and cartoons unlawful.**

§ 258. It shall be unlawful to publish in any newspaper, hand-bill, poster, book or serial publication, or supplement thereto, the portrait of any living person a resident of California, other than that of a person holding a public office in this state, without the written consent of such person first had and obtained; provided, that it shall be lawful to publish the portrait of a person convicted of a crime. It shall likewise be unlawful to publish in any newspaper, hand-bill, poster, book or serial publication or supplement thereto, any caricature of any person residing in this state, which caricature will in any manner reflect upon the honor, integrity, manhood, virtue, reputation, or business or political motives of the person so caricatured, or which tends to expose the individual so caricatured to public hatred, ridicule, or contempt. A violation of this section shall be a misdemeanor, and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment. All persons concerned in said publication, either as owner or manager, editor, or publisher, or engraver, are each liable for said publication. Actions for the violation of this section shall be tried in the county where such newspaper, hand-bill, poster, book, or serial publication or supplement is printed or has its publication office, or in the county where the person whose portrait or caricature is published resides at the time of the alleged publication.

Legislation § 258. Added by Stats. 1899, p. 28.

**Newspaper articles of personal character must be signed. Penalty for violation. Name of author of book or news agency sufficient.**

§ 259. Every article, statement, or editorial, contained in any newspaper or other printed publication, printed or published in this state, which by writing or printing tends to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule, must be supplemented by the true name of the writer of such article, statement, or editorial, signed or printed at the end thereof. Any owner, proprietor or publisher of any newspaper or

other printed publication, printed or published in this state, who shall publish any such article, statement, or editorial in any printed publication, printed or published in this state, which is not so supplemented by the true name of the writer thereof, signed or printed at the end thereof as required by this section, shall forfeit the sum of one thousand dollars for each and every article, statement, or editorial so published in violation of the requirements of this section, which said sum so forfeited may be sued for and recovered against any such owner, publisher, or proprietor so violating this section, in a civil action by and in the name of any person who may bring action therefor, one half of the recovery to be paid into the treasury of this state by the plaintiff and the other half to be retained by the plaintiff in such action. If, in any such action, it shall appear by affidavit to the satisfaction of the court where such action is commenced that a defendant has made a publication in violation of this section within this state, and that after due diligence such defendant cannot be found within this state, or is a foreign corporation, the court must direct an attachment in such action to issue against the property of such defendant, and thereupon such attachment shall issue and be executed as in other cases where by law an attachment is provided for. Where the work of any author is contained in a book or pamphlet it shall be sufficient that the name of the author be printed upon the cover or upon a leaf therein, and where any publisher in the regular course of business publishes as news, telegraphic dispatches not furnished or forwarded by its or his own correspondent or correspondents, but furnished and forwarded by telegraph as news by a telegraphic news agency, established and engaged in forwarding telegraphic news to various different publishers as a business, and having an established business name as such a news agency, it shall be sufficient as to such dispatches, that the said business name of such telegraphic news agency be printed in connection with such dispatches as the forwarder of the same.

**Legislation § 259.** Added by Stats. 1899, p. 155.

## TITLE IX.

**Crimes against the Person and against Public Decency and Good Morals.**

- Chapter I. Rape, Abduction, Carnal Abuse of Children, and Seduction. §§ 261-269b.
- II. Abandonment and Neglect of Children. §§ 270-273g.
- III. Abortions. §§ 274, 275.
- IV. Child-stealing. § 278.
- V. Bigamy, Incest, and the Crime against Nature. §§ 281-288.
- VI. Violating Sepulture and the Remains of the Dead. §§ 290-297.
- VII. Crimes against Religion and Conscience, and Other Offenses against Good Morals. §§ 299-310½.
- VIII. Indecent Exposure, Obscene Exhibitions, Books and Prints, and Bawdy and Other Disorderly Houses. §§ 311-318.
- IX. Lotteries. §§ 319-326.
- X. Gaming. §§ 330-337a.
- XI. Pawnbrokers. §§ 338-344.
- XII. Other Injuries to Persons. §§ 346-367b.

## CHAPTER I.

**Rape, Abduction, Carnal Abuse of Children, and Seduction.**

- § 261. Rape defined.
- § 262. When physical ability must be proved.
- § 263. Penetration sufficient.
- § 264. Punishment of rape.
- § 265. Abduction of women.
- § 266. Seduction for purposes of prostitution.
- § 266a. Taking female for purpose of prostitution.
- § 266b. Taking female by force, duress, etc., to live in an illicit relation.
- § 266c. Bringing or landing Chinese or Japanese women for the purpose of selling.
- § 266d. Placing female in custody for the purpose of cohabitation.
- § 266e. Paying for female for the purpose of prostitution.
- § 266f. Selling female for immoral purposes.

§ 266g. Placing or permitting the placing of one's wife in house of prostitution.

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§ 268. Seduction under promise of marriage. Penalty.

§ 269. Intermarriage, when a bar to prosecution.

§ 269a. Open and notorious fornication and adultery.

§ 269b. Open and notorious adultery of married persons. Proof.

#### Rape defined.

§ 261. Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years;
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists, but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anæsthetic substance, administered by or with the privity of the accused;
5. Where she is at the time unconscious of the nature of the act, and this is known to the accused;
6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

**Legislation § 261.** 1. Enacted February 14, 1872 (based on Field Draft, § 319, N. Y. Pen. Code, § 278; Kan. Gen. Stats., § 323), differing from the amendment of 1897 (the present section), having, (1) in subd. 1, "ten years" instead of "sixteen years" (changed to "fourteen years" in 1889); (2) in subd. 2, "any" before "other unsoundness"; (3) in subd. 4, "immediate and great bodily harm" instead of "great and immediate bodily harm"; (4) in subd. 6, "a belief" instead of "the belief." 2. Amended by Stats. 1889, p. 223, differing from the amendment of 1897 (the present section), having, (1) in subd. 1, "fourteen years" instead of "sixteen years," and (2) in subd. 4, the same phraseology as the original code section. 3. Amended by Stats. 1897, p. 201.

**Citations.** Cal. 68/615; 70/468; 75/324; 94/311; 106/213, 214; 112/672; 138/468; 143/317; 146/304; (subd. 1) 129/121; 133/23; (subd. 2) 117/585; 129/121; (subd. 3) 70/473; 129/121; (subd. 4) 70/473; 129/121; (subd. 5) 129/121; (subd. 6) 129/121. App. (subd. 1) 2/279,

**Assault with intent to commit:** See ante, § 220.

**When physical ability must be proved.**

§ 262. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Legislation § 262. Enacted February 14, 1872; identical with Field Draft, § 320, N. Y. Pen. Code, § 279.

Citations. Cal. 98/853.

**Penetration sufficient.**

§ 263. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

Legislation § 263. Enacted February 14, 1872; identical with Field Draft, § 321, N. Y. Pen. Code, § 280.

Citations. Cal. 133/23; 143/317.

**Punishment of rape.**

§ 264. Rape is punishable by imprisonment in the state prison not less than five years.

Legislation § 264. Enacted February 14, 1872; based on Crimes and Punishment Act, § 47, as amended by Stats. 1855, p. 105, § 1.

Citations. Cal. 98/129.

**Abduction of women.**

§ 265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

Legislation § 265. Enacted February 14, 1872 (N. Y. Pen. Code, § 282); based on Crimes and Punishment Act, as amended and supplemented by Stats. 1856, p. 181, § 1.

**Seduction for purposes of prostitution.**

§ 266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement

or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

**Legislation § 266.** 1. Enacted February 14, 1872 (based on Field Draft, § 328, N. Y. Pen. Code, § 282), and then read: "Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of twenty-five years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution; and every person who aids or assists in such abduction for such purpose; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both." The code commissioners cite statutes on kindred offenses, enacted subsequently to the adoption of the Penal Code: Stats. 1871-72, pp. 184, 380. 2. Amended by Code Amdts. 1873-74, p. 429.

**Citations.** Cal. 49/10; 87/286; 119/594.

**Act to punish seduction:** See post, Appendix, tit. "Seduction."

#### **Taking female for purpose of prostitution.**

§ 266a. Every person who, within this state, takes any female person against her will and without her consent, or with her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

**Legislation § 266a.** 1. Addition by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 655; the code commissioner saying in his note to §§ 266a, 266b, 266c, 266d, 266e, 266f, "The statute of 1893, p. 217, regarding the compulsory prostitution of women, is codified in the above-named sections. The penalties here set forth in §§ 266d, 266e, and 266f are those of a felony instead of the various penalties set forth in the corresponding sections of the statute codified."

#### **Taking female by force, duress, etc., to live in an illicit relation.**

§ 266b. Every person who takes any female person unlawfully, and against her will, and by force, menace, or duress, compels her to live with him in an illicit relation, against her consent, or to so live with

any other person, is punishable by imprisonment in the state prison not less than two nor more than four years.

Legislation § 266b. 1. Addition by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 655. See ante, Legislation § 266a, for code commissioner's note.

**Bringing or landing Chinese or Japanese women for the purpose of selling.**

§ 206c. Every person bringing to, or landing within this state, any female person born in the empire of China or the empire of Japan, or the islands adjacent thereto, with intent to place her in charge or custody of any other person, and against her will to compel her to travel with him, or for the purpose of selling her to any person whomsoever, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months.

Legislation § 266c. 1. Addition by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 656. See ante, Legislation § 266a, for code commissioner's note.

**Placing female in custody for the purpose of cohabitation.**

§ 266d. Any person who receives any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any male to whom she is not married, is guilty of a felony.

Legislation § 266d. 1. Added by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 656. See ante, Legislation § 266a, for code commissioner's note.

**Paying for female for the purpose of prostitution.**

§ 266e. Every person who purchases, or pays any money or other valuable thing for, any female person for the purpose of prostitution, or for the purpose of placing her, for immoral purposes, in any house or place against her will, is guilty of a felony.

Legislation § 266e. 1. Addition by Stats. 1901, p. 448; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 656. See ante, Legislation § 266a, for code commissioner's note.

**Selling female for immoral purposes.**

§ 266f. Every person who sells any female person or receives any money or other valuable thing for or on account of his placing in cus-



today, for immoral purposes, any female person, whether with or without her consent, is guilty of a felony.

**Legislation § 266f.** 1. Addition by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 656. See ante, Legislation § 266a, for code commissioner's note.

**Placing or permitting the placing of one's wife in house of prostitution.**

§ 266g. Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for not less than three nor more than ten years; and in all prosecutions under this section a wife is a competent witness against her husband.

**Legislation § 266g.** 1. Added by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 656; the code commissioner saying, "This section codifies the statute of 1891, p. 285, regarding the placing and keeping of married women in houses of prostitution."

**Abduction.**

§ 267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

**Legislation § 267.** Enacted February 14, 1872; based on Field Draft, § 829, N. Y. Pen. Code, § 282; Kan. Gen. Stats., § 824.

**Citations.** Cal. 61/479, 480, 481; 71/612; 88/138, 317; 96/316, 318; 141/544, 545, 548.

**Act to prevent seduction:** See post, Appendix, tit. "Seduction."

**Abduction or kidnaping of infant for prostitution:** See post, § 784.

**Seduction under promise of marriage. Penalty.**

§ 268. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the state prison for not

more than five years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

**Legislation § 268.** Added by Stats. 1889, p. 12.

**Citations.** Cal. 98/77; 97/451; 118/678; 120/539; 123/225, 226; 137/268; 143/101. App. 4/653.

**Intermarriage, when a bar to prosecution.**

§ 269. The intermarriage of the parties subsequent to the commission of the offense is a bar to a prosecution for a violation of the last section; provided, such marriage take place prior to the finding of an indictment or the filing of an information charging such offense.

**Legislation § 269.** Added by Stats. 1889, p. 12.

**Citations.** Cal. 120/539; 123/225, 226.

**Open and notorious fornication and adultery.**

§ 269a. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both.

**Legislation § 269a.** 1. Addition by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 657; the code commissioner saying in his note to §§ 269a, 269b, "The act to punish adultery (Stats. 1871-72, p. 380) is codified in the two sections above named."

**Citations.** App. 8/350.

**Open and notorious adultery of married persons. Proof.**

§ 269b. If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this section.

**Legislation § 269b.** 1. Addition by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 657. See ante, Legislation § 269a, for code commissioner's note.

## CHAPTER II.

## Abandonment and Neglect of Children.

- § 270. Non-support of child.
- § 270a. Non-support of wife.
- § 270b. Surety for support.
- § 270c. Adult child, duty of, to provide for indigent parents.
- § 271. Desertion of minor.
- § 271a. Maintenance of minor.
- § 272. Person selling, apprenticing, etc., children.
- § 273. Person receiving, hiring, etc., children.
- § 273a. Unjustifiable punishment causing child to suffer.
- § 273b. Child not to be confined.
- § 273c. Fines, how appropriated.
- § 273d. Court may commit child to charitable institution.
- § 273e. Minor not to deliver messages, etc., to certain places.
- § 273f. Sending children to immoral places.
- § 273g. Immoral practices in presence of children.

## Non-support of child.

§ 270. A parent who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attendance for his child, is punishable by imprisonment in the state prison, or in the county jail, not exceeding two years, or by fine not exceeding one thousand dollars, or by both.

Legislation § 270. 1. Enacted February 14, 1872 (based on Field Draft, § 333, N. Y. Pen. Code, § 287), and then read: "Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 758, to read: "A parent who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his child, is guilty of a misdemeanor"; the code commissioner saying, "The change consists in the omission of the words now following the word 'excuse,' 'to perform any duty imposed upon him by law.' They are clearly without significance as employed in the section." 4. Amended by Stats. 1909, p. 258.

Indictable omissions: Ante, § 26, subd. 6.

Duty of parent to support child: See Civ. Code, §§ 196, 208, 209.

Corporations for prevention of cruelty to children: See Civ. Code, §§ 607 et seq.

## Non-support of wife.

§ 270a. Every husband having sufficient ability to provide for his wife's support, or who is able to earn the means of such wife's sup-

port, who willfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless by her misconduct he was justified in abandoning her, is punishable by imprisonment in the state prison, or in the county jail, not exceeding two years, or by fine not exceeding one thousand dollars, or by both.

**Legislation § 270a.** 1. Added by Stats. 1907, p. 91 (becoming a law, under constitutional provision, without governor's approval), the section then ending with the words "is guilty of a misdemeanor" instead of "is punishable by," etc., as in the amendment of 1909. 2. Amended by Stats. 1909, p. 258.

### **Surety for support.**

§ 270b. After arrest and before plea or trial, or after conviction or plea of guilty and before sentence under either section two hundred and seventy or two hundred and seventy a of this code, if the defendant shall appear before the court and enter into an undertaking with sufficient sureties to the people of the state of California in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such child or to such wife, such sum per month as may be fixed by the court in order to thereby provide said minor child or said wife, as the case may be, with necessary food, clothing, shelter, or medical attendance, then the court may suspend proceedings or sentence therein; and said undertaking is valid and binding for six months; and upon the failure of defendant to comply with said undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in said action or why sentence should not be imposed, whereupon the court may proceed with said action, or pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

**Legislation § 270b.** 1. Added by Stats. 1907, p. 92 (becoming a law, under constitutional provision, without governor's approval), and then read: "After arrest, conviction or plea of guilty on a charge of a misdemeanor under either section two hundred and seventy or two hundred and seventy a, of this code, and before trial or sentence, if the defendant shall appear before the court and enter into an undertaking with sufficient sureties to the people of the state of California in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will furnish said minor child

or wife as the case may be, with necessary food, clothing, shelter or medical attendance, then the court may suspend proceedings or sentence therein; and said undertaking is valid and binding for six months; and upon the failure of defendant to comply with said undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in said action or sentence should not be imposed, whereupon the court may proceed with said action, or pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend proceedings, or sentence for a like period." 2. Amended by Stats. 1909, p. 259.

#### **Adult child, duty of, to provide for indigent parents.**

§ 270c. Every adult child, who having the ability so to do, fails to provide necessary food, clothing, shelter, or medical attendance for an indigent parent, is guilty of a misdemeanor.

Legislation § 270c. Added by Stats. 1909, p. 166.

#### **Desertion of minor.**

§ 271. Every parent of any child under the age of fourteen years, and every person to whom any such child has been confided for nurture, or education, who deserts such child in any place whatever with intent wholly to abandon it, is punishable by imprisonment in the state prison or in the county jail not exceeding one year or by fine not exceeding five hundred dollars, or by both.

Legislation § 271. 1. Enacted February 14, 1872 (identical with Field Draft, § 332, N. Y. Pen. Code, § 287), and then read: "Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year." 2. Amended by Stats. 1909, p. 297.

#### **Maintenance of minor.**

§ 271a. Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of fourteen years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application has been made is an orphan, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

**Legislation § 271a.** 1. Addition by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 758, the section then ending with the words "application is made is an orphan, is guilty of a misdemeanor," instead of "application has been made," etc., as in the amendment of 1909; the code commissioner saying, "The penal section of the statute of 1873-74, relating to the care of orphan and abandoned children, is codified in this section." 3. Amended by Stats. 1909, p. 297.

**Person selling, apprenticing, etc., children.**

§ 272. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who exhibits, uses, or employs, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or disposes of any such child to any person, under any name, title, or pretense, for or in any business, exhibition, or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever, or for or in any obscene, indecent or immoral purposes, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures, or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child, as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the city or town where such concert or entertainment takes place.

**Legislation § 272.** 1. Added by Code Amdts. 1875-76, p. 110, and then read: "Any person, whether as parent, relative, guardian, employer, or otherwise, having in his care, custody, or control any child under the age of sixteen years, who shall sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, for the vocation, use, occupation, calling, service, or purpose of singing, playing on musical instruments, rope-walking, dancing, begging, or peddling, in any public street or highway, or in any mendicant or wandering business whatsoever;

and any person who shall take, receive, hire, employ, use, or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 449; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 759; the code commissioner saying in his note to §§ 272, 273, 273a, 273b, 273c, 273d, "The two statutes, one of 1877-78, p. 812, and the other of 1877-78, p. 813, relating to children, are codified by an amendment to § 272 and by the addition of §§ 273, 273a, 273b, 273c, and 273d."

Citations. Cal. 149/894.

#### Person receiving, hiring, etc., children.

§ 273. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, any child under the age, and for any of the purposes mentioned in the preceding section, is guilty of a like offense, and punishable by a like punishment as therein provided.

Legislation § 273. 1. Addition by Stats. 1901, p. 450; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 759 (approved March 22, 1905). See ante, Legislation § 272, for code commissioner's note. At the same session of the legislature in 1905, another section numbered 273 was enacted (Stats. 1905, p. 74; approved March 7, 1905), the present § 273f, q.v., infra. Citations. Cal. 149/894.

#### Unjustifiable punishment causing child to suffer.

§ 273a. Any person who willfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who willfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is guilty of a misdemeanor.

Legislation § 273a. 1. Addition by Stats. 1901, p. 450; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 759. See ante, Legislation § 272, for code commissioner's note.

#### Child not to be confined.

§ 273b. No child under the age of sixteen years must be placed in any prison, or place of confinement, or in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official.

**Legislation § 273b.** 1. Addition by Stats. 1901, p. 450; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 760. See ante, Legislation § 272, for code commissioner's note.

#### **Fines, how appropriated.**

§ 273c. All fines, penalties, and forfeitures imposed and collected under the provisions of the five preceding sections, or under the provisions of any law relating to, or affecting, children, in every case where the prosecution is instituted or conducted by a society incorporated under the laws of this state for the prevention of cruelty to children, inure to such society in aid of the purposes for which it is incorporated.

**Legislation § 273c.** 1. Addition by Stats. 1901, p. 451; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 760. See ante, Legislation § 272, for code commissioner's note.

#### **Court may commit child to charitable institution.**

§ 273d. When, upon examination before a court or magistrate, it appears that any child under the age of sixteen years has been found begging, whether actually begging or under the pretext of selling anything, or wandering and not having any settled place of abode, or proper guardianship, or visible means of subsistence; or destitute, or frequenting the company of reputed thieves, or prostitutes or houses of prostitution or assignation, dance-houses, concert-saloons, theaters, or places where spirituous liquors are sold; or engaged in any business, exhibition, or vocation mentioned in section two hundred and seventy-two; or in the custody of any person convicted of a criminal assault upon it; the court or magistrate may, when it deems it expedient for the welfare of such child, commit it to an orphan asylum, society for the prevention of cruelty to children, or other charitable institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

**Legislation § 273d.** 1. Addition by Stats. 1901, p. 451; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 760. See ante, Legislation § 272, for code commissioner's note.

#### **Minor not to deliver messages, etc., to certain places.**

§ 273e. Every telephone, special delivery company or association, and every other corporation or person engaged in the delivery of



packages, letters, notes, messages, or other matter, and every manager, superintendent, or other agent of such person, corporation, or association, who sends any minor in the employ or under the control of any such person, corporation, association, or agent, to the keeper of any house of prostitution, variety theater, or other place of questionable repute, or to any person connected with, or any inmate of, such house, theater, or other place, or who permits such minor to enter such house, theater, or other place, is guilty of a misdemeanor.

**Legislation § 273e.** 1. Addition by Stats. 1901, p. 451; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 760; the code commissioner saying, "The matter in § 1389, which incorrectly stands in a chapter entitled 'Dismissal of the Action,' is put into a new section designated as 273e in the proper chapter, with the other sections relative to children, and § 1389 accordingly repealed."

**Citations.** Cal. 150/118. App. 7/529.

#### **Sending children to immoral places.**

§ 273f. Any person, whether as parent, guardian, employer, or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct, or cause to be sent or directed to any saloon, gambling-house, house of prostitution, or other immoral place, any minor under the age of eighteen, is guilty of a misdemeanor.

**Legislation § 273f.** 1. Added by Stats. 1905, p. 74, as § 278 (approved March 7, 1905), and then had the words "eighteen years" instead of "eighteen," as in the present section. 2. Repealed by Stats. 1907, p. 565, and added as a new section numbered 273f; the code commissioner saying, "As by the above codification of § 278 in 1905, there came to be in the Penal Code two sections of that number, the defect was remedied in 1907 by repealing § 278, as approved March 7, 1905, and re-enacting it as 273f." See ante, Legislation § 278.

#### **Immoral practices in presence of children.**

§ 273g. Any person who in the presence of any child indulges in any degrading, lewd, immoral or vicious habits or practices, or who is habitually drunk in the presence of any child in his care, custody or control, is guilty of a misdemeanor.

**Legislation § 273g.** Added by Stats. 1907, p. 756.

## CHAPTER III.

## Abortions.

§ 274. Administering drugs, etc., with intent to produce miscarriage.

§ 275. Submitting to an attempt to produce miscarriage.

**Administering drugs, etc., with intent to produce miscarriage.**

§ 274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

Legislation § 274. Enacted February 14, 1872. (Field Draft, § 334, N. Y. Pen. Code, § 294.) See post, Legislation § 275, for code commissioners' note. Citations. Cal. 143/261. App. 8/615.

**Submitting to an attempt to produce miscarriage.**

§ 275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

Legislation § 275. Enacted February 14, 1872. (Field Draft, § 335, N. Y. Pen. Code, § 295.) The code commissioners say: "The two preceding sections are based upon statute of 1861, p. 588, § 1. Modifications have been made in the language. . . ."

## CHAPTER IV.

## Child-stealing.

§ 278. Definition and punishment of child-stealing.

**Definition and punishment of child-stealing.**

§ 278. Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years.

**Legislation § 278.** 1. Enacted February 14, 1872 (based on Field Draft, § 287, N. Y. Pen. Code, § 337; Crimes and Punishment Act, as amended and supplemented by Stats. 1856, p. 131, § 2), and then read: "Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars." 2. Amended by Stats. 1901, p. 269.

**Citations.** Cal. 60/72; 147/426.

## CHAPTER V.

### Bigamy, Incest, and the Crime against Nature.

§ 281. Bigamy defined.

§ 282. Exceptions.

§ 283. Punishment of bigamy.

§ 284. Marrying a husband or wife of another. Punishment.

§ 285. Incest.

§ 286. Crime against nature.

§ 287. Penetration sufficient to complete the crime.

§ 288. Crimes against children, a felony.

#### Bigamy defined.

§ 281. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

**Legislation § 281.** Enacted February 14, 1872 (Field Draft, § 388, N. Y. Pen. Code, § 298); based on Crimes and Punishment Act, Stats. 1850, p. 244, § 121, which read: "§ 121. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this state, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, and be imprisoned in the county jail not more than two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when such second marriage shall have taken place without this state, cohabitation in this state, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within

that time. Also, nothing herein contained shall extend to any person that is, or shall be at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been, by lawful authority, declared void."

(Citations. Cal. 99/288.

**Marriage is a civil contract, and must be followed by solemnization: See Civ. Code, § 55.**

#### **Exceptions.**

§ 282. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,
2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

**Legislation § 282.** Enacted February 14, 1872. (Field Draft, § 339, N. Y. Pen. Code, § 299.) The code commissioners say: "Subd. 2 of the preceding section is substantially part of § 121 of the Crimes and Punishment Act as amended. (Stats. 1861, p. 415.) The two preceding sections are based on the statute referred to. Modifications have been made in the language. . . ."

#### **Punishment of bigamy.**

§ 283. Bigamy is punishable by a fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years.

**Legislation § 283.** 1. Enacted February 14, 1872 (based on Crimes and Punishment Act, § 121, as amended by Stats. 1861, p. 415, § 1), and then read: "Bigamy is punishable by fine not exceeding two thousand dollars and by imprisonment in the state prison not exceeding three years." 2. Amended by Stats. 1905, p. 245.

#### **Marrying a husband or wife of another. Punishment.**

§ 284. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years.

**Legislation § 284.** 1. Enacted February 14, 1872; based on Field Draft, § 341, N. Y. Pen. Code, § 301; Crimes and Punishment Act, § 122, as amended

by Stats. 1861, p. 415, § 2. 2. Amended by Stats. 1905, p. 245, (1) substituting "five thousand dollars" for "two thousand dollars," and (2) "ten years" for "three years."

#### Incest.

§ 285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

Legislation § 285. Enacted February 14, 1872 (Field Draft, § 342, N. Y. Pen. Code, § 302); based on Crimes and Punishment Act, Stats. 1850, p. 244, § 123, which read: "§ 123. Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the state prison not exceeding ten years."

Citations. Cal. 102/242; 119/458; 141/606, 607, 609; 142/622.

Incestuous marriages: See Civ. Code, § 59.

Person solemnizing incestuous marriage, how punished: Post, § 359.

#### Crime against nature.

§ 286. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

Legislation § 286. Enacted February 14, 1872 (Field Draft, § 343, N. Y. Pen. Code, § 303); based on Crimes and Punishment Act, Stats. 1850, p. 234, § 48, which read: "§ 48. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the state prison for a term not less than five years, and which may extend to life."

Citations. App. 1/3; 4/395.

Assault to commit crime against nature: See ante, § 220.

#### Penetration sufficient to complete the crime.

§ 287. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

Legislation § 287. Enacted February 14, 1872; identical with Field Draft, § 344, N. Y. Pen. Code, § 304; Crim. Prac. Act, Stats. 1851, p. 252, § 374, reading: "§ 374. Proof of actual penetration into the body is sufficient to sustain an indictment for rape or for the crime against nature."

~~Crimes against children, a felony.~~

~~§ 288. Any person who shall wilfully and lewdly commit any lewd or lascivious act other than the acts constituting other crimes provided for in part two of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison not less than one year.~~

Legislation § 288. Added by Stats. 1901, p. 630.

Citations. Cal. 142, 145, 151. App. 1, 1, 42, 43; 2/280; 6/230; 8/742, 748.

## CHAPTER VI.

### Violating Sepulchre and the Remains of the Dead.

- § 288. Unlawful mutilation or removal of dead bodies. Not to apply to certain persons.
- § 291. Unlawful removal of dead body from grave for dissection, etc.
- § 292. Who are charged with the duty of burial.
- § 293. Punishment for omitting to bury.
- § 294. Who are entitled to custody of dead body.
- § 295. Arresting or attacking a dead body.
- § 296. Defacing tombs and monuments.
- § 297. Interring remains in city, etc., &c.

**Unlawful mutilation or removal of dead bodies. Not to apply to certain persons.**

§ 290. Every person who mutilates, disinters, or removes from the place of sepulchre the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

Legislation § 290. Enacted February 14, 1872; based on Stats. 1854, Kerr ed. p. 6. Redding ed. p. 20, § 1.

Citations. Cal. 58, 226, 227; 135, 72, 76.

Bodies not to be removed without permit: Pol. Code, § 3027.

Act to prevent disinterring dead bodies: See post, Appendix, tit. "Public Health."

**Unlawful removal of dead body from grave for dissection, etc.**

§ 291. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been

buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the state prison not exceeding five years.

**Legislation § 291.** Enacted February 14, 1872; based on Field Draft, § 855, N. Y. Pen. Code, § 811.

**Who are charged with the duty of burial.**

§ 292. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband;

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this state, and possessed of sufficient means to defray the necessary expenses;

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs;

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises or master; or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

**Legislation § 292.** Enacted February 14, 1872; almost identical with Field Draft, § 852, the only changes being grammatical, not affecting the sense.

**Citations.** Cal. 110/88; 118/208; 128/289; 181/72; 140/288.

**Punishment for omitting to bury.**

§ 293. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead treble the expenses in-

curring by the latter in making the burial, to be recovered in a civil action.

**Legislation § 293.** Enacted February 14, 1872; identical with Field Draft, § 353.

**Citations.** Cal. 118/203.

**Who are entitled to custody of a body.**

§ 294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

**Legislation § 294.** Enacted February 14, 1872; almost identical with Field Draft, § 354, the only alteration made being to change "cases" to "case."

**Citations.** Cal. 131/72; 134/294.

**Arresting or attaching a dead body.**

§ 295. Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

**Legislation § 295.** Enacted February 14, 1872; identical with Field Draft, § 359, N. Y. Pen. Code, § 814. The code commissioners say: "From the following newspaper extract it would seem that the provisions of the four preceding sections, which are taken from the New York Penal Code [Field Draft] (§§ 352, 353, 354, 359), are not entirely unnecessary, even in this enlightened age: 'A Chinaman, arrested some days since for dumping the dead bodies of his countrywomen on the streets, instead of burying them, pleaded guilty to the offense against the common law.'—Sacramento Union, October 11, 1870."

**Citations.** Cal. 118/26.

**Defacing tombs and monuments.**

§ 296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.



**Legislation § 296.** Enacted February 14, 1873. (Field Draft, § 361.) The code commissioners say: "The preceding section is based upon § 2 of the act to protect the bodies of deceased persons, etc. (Stats. 1854, p. 20), and an act to protect cemeteries in Nevada County (Stats. 1868, p. 26), and embraces all the material provisions thereof. . . ."

**Interring remains in city, etc., limits.**

§ 297. Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this state, or within the corporate limits of the city and county of San Francisco, except in a cemetery, or place of burial now existing under the laws of this state, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county, or city and county, in which such city or town, or city and county is situate, shall be guilty of a misdemeanor.

**Legislation § 297.** Added by Code Amdts. 1878-74, p. 458.  
Citations. Cal. 60/4; 140/238; 152/478.

**CHAPTER VII.**

**Crimes against Religion and Conscience, and Other Offenses against Good Morals.**

- § 299. Barbarous and noisy amusements, and theaters where liquors are sold, prohibited on Sunday. [Repealed.]
- § 300. Keeping open places of business on Sunday. [Repealed.]
- § 301. Limitation on operation of preceding section. [Repealed.]
- § 302. Disturbing religious meetings.
- § 303. Sale of liquors at theaters, and employing women to sell liquors thereat. [Repealed.]
- § 304. Selling liquors at camp-meeting.
- § 305. Limitation of preceding section.
- § 306. Females exhibited in public places. [Repealed.]
- § 307. Keeping or resorting to place where opium is used.
- § 308. Selling tobacco to minors.
- § 308b. Supplemental books, purchase of.
- § 309. To prevent admission of minors to houses of prostitution.
- § 310. Advertisements, etc., on flag prohibited. Penalty. Exceptions.
- § 310½. Barber-shops and bath-houses must not be conducted after twelve m. on Sundays. [Repealed.]

§ 299. [Barbarous and noisy amusements, and theaters where liquors are sold, prohibited on Sunday. Repealed.]

**Legislation § 299.** 1. Enacted February 14, 1872. 2. Repealed by Stats. 1883, p. 1.  
**Citations.** Cal. 60, 198.

**§ 300.** [Keeping open places of business on Sunday. Repealed.]

**Legislation § 300.** 1. Enacted February 14, 1872. 2. Repealed by Stats. 1883, p. 1.  
**Citations.** Cal. 59/7; 60/152, 188, 190, 191, 192, 193, 195, 198, 201, 205.

**§ 301.** [Limitation on operation of preceding section. Repealed.]

**Legislation § 301.** 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1880, p. 38. 3. Repealed by Stats. 1883, p. 1.  
**Citations.** Cal. 59/12; 60 148, 199, 190, 191, 192, 193, 198, 201, 205.  
**Act providing day of rest from labor:** See post, Appendix, tit. "Sundays."  
**Act providing for day of rest in bakeries:** See post, Appendix, tit. "Sundays."

**Disturbing religious meetings.**

**§ 302.** Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

**Legislation § 302.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 243, § 117; Tenn. Code, §§ 48, 52. 2. Amendment by Stats. 1901, p. 451; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 657; the code commissioner saying, "The change consists in the omission of the word 'noise' before the word 'profane,' it being manifestly an error in the statute, as it occurs later in the section with a qualification."  
**Citations.** Cal. 60/195, 198.

**§ 303.** [Sale of liquors at theaters, and employing women to sell liquors thereat. Repealed.]

**Legislation § 303.** 1. Enacted February 14, 1872. 2. Repeal by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. 2. Repealed by Stats. 1905, p. 657; the code commissioner saying, "The section is in conflict with § 18 of article xx of the constitution, which provides that 'no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession' (Ex parte Maguire, 57 Cal. 604), and is, therefore, repealed."

**Selling liquors at camp-meeting.**

§ 304. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous, or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

**Legislation § 304.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 118, as amended by Stats. 1859, p. 188, § 1.

**Citations.** Cal. 60/191, 195.

**Limitation of preceding section.**

§ 305. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

**Legislation § 305.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 118, as amended by Stats. 1859, p. 188, § 1.

**§ 306. [Females exhibited in public places. Repealed.]**

**Legislation § 306.** 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1873-74, p. 459. 3. Amended by Code Amdts. 1873-74, p. 460. 4. Repeal by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. 5. Repealed by Stats. 1905, p. 658; the code commissioner saying, "This section is explicitly held to be in conflict with § 18 of article xx of the constitution in *Ex parte Maguire*, 57 Cal. 604, 609, and is, therefore, repealed."

**Citations.** Cal. 57/605.

**Keeping or resorting to place where opium is used.**

§ 307. Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations, is sold or given away, to be smoked at such place; and any person who, at such place, sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; and every person who visits or resorts to any such place for the purpose of smoking opium or its said preparations, is guilty of a misdemeanor, and upon conviction

thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**Legislation § 307.** 1. Added by Stats. 1881, p. 84. 2. Amendment by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. The original code § 307, entitled "Procuring female under seventeen years of age to exhibit herself for hire. Female under seventeen exhibiting herself for hire," was amended by Code Amdts. 1873-74, p. 459, and was repealed at the same session of the legislature: Code Amdts. 1873-74, p. 461.

**Citations.** Cal. 73/144, 146, 150, 151, 152. App. 8/808.

#### **Selling tobacco to minors.**

§ 308. Every person who sells or gives or furnishes in any way to another who is in fact under the age of sixteen years, any tobacco, or preparation of tobacco, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars; provided, however, that this section shall not be deemed to apply to articles furnished on prescriptions from physicians authorized by law to practice medicine, nor to persons who supply such articles to their own children, nor to sales made to such minors upon the written consent of the parents or guardians of such minors first obtained in writing by the vender.

**Legislation § 308.** Added by Stats. 1891, p. 64.

#### **Supplemental books, purchase of.**

§ 308b. Any principal, teacher, employee or school officer of any elementary or secondary school who refuses to use the text-books prescribed by the proper authority for use in the elementary or secondary schools under his charge, who causes any pupil to purchase any supplementary book or books for said pupil's use in the schools, or who refuses or willfully neglects to make such reports as are required by law, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than one hundred dollars.

**Legislation § 308b.** Added by Stats. 1909, p. 408.

#### **To prevent admission of minors to houses of prostitution.**

§ 309. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep

any minor of either sex therein; or any parent or guardian of any such minor, who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house, or room, shall be guilty of a misdemeanor.

Legislation § 309. Added by Code Amdts. 1880, p. 36.

Citations. Cal. 150/118.

Punishment for using child for immoral purposes: See ante, §§ 272 et seq.

Prohibiting child from entering saloon, begging, etc.: See ante, §§ 272 et seq.

#### Advertisements, etc., on flag prohibited. Penalty. Exceptions.

§ 310. That any person, firm or corporation, who, in any manner, for exhibition or display, puts, places, or causes to be placed, an inscription, picture, device, design, symbol, name, advertisement, word, letter, character, mark or notice of any kind whatsoever, upon any flag of the United States, or ensign evidently purporting to be such flag, or who in any manner appends, annexes or affixes to any such flag any inscription, picture, device, symbol, name, advertisement, word, letter, character, mark or notice whatsoever, or who displays or exhibits, or causes to be displayed or exhibited, any flag, of the United States or ensign purporting to be such flag, upon which is put, attached, annexed, affixed or placed in any manner, any inscription, picture, design, device, symbol, name, advertisement, word, letter, mark or notice whatsoever, or who mutilates, tramples upon, or otherwise defaces or defiles any such flag, said flag, be public or private property, or who places or causes to be placed on any manufactured or prepared article or covering of said article, such flag, or indication of such flag, or who uses or causes to be used for purposes of a commercial or other trade-mark, such flag, or indication of such flag, shall be fined not more than two hundred dollars or imprisoned not more than one year, or both, for each and every offense, in the county jail of the county in which the trial is held; provided however, that flags, or ensigns, the property of and used in the service of the United States, or any state, territory or District of Columbia, may have inscriptions, names of actions, battles, skirmishes, or words, marks or symbols, which are placed thereon pursuant to law or authorized regulations; provided further, that this act shall not apply to banners or flags carried by military or patriotic organizations ex-

isting under the laws of the state of California and the United States of America, or to flags used in theatrical performances, or to flags carried by political parties, or organizations, in parades, or in public meetings.

**Legislation § 310.** Added by Stats. 1909, p. 401. The code commissioners, in 1901, made an addition of a section numbered 653d (Stats. 1901, p. 479), reading, "653d. Any person who desecrates the flag of the United States, by printing thereon or attaching thereto any advertisement of any nature whatsoever, is guilty of a misdemeanor"; unconstitutional: See note, § 5, ante.

§ 310½. [Barber-shops and bath-houses must not be conducted after twelve m. on Sundays. Repealed.]

**Legislation § 310½.** 1. Added by Stats. 1895, p. 246. 2. Repeal by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 658; the code commissioner saying, "This section was explicitly held to be unconstitutional in *Ex parte Jentszck*, 112 Cal. 468, and is, therefore, repealed."

**Citations.** Cal. 112/470.

## CHAPTER VIII.

### Indecent Exposure, Obscene Exhibitions, Books and Prints, and Bawdy and Other Disorderly Houses.

- § 311. Indecent exposures, exhibitions, and pictures.
- § 312. Seizure of indecent articles authorized.
- § 313. Their character to be summarily determined.
- § 314. Their destruction.
- § 315. Keeping or residing in house of ill-fame. Proof.
- § 316. Keeping disorderly houses.
- § 317. Advertising to produce miscarriage.
- § 318. Prevailing upon any person to visit a place kept for gambling or prostitution, a misdemeanor.

#### Indecent exposures, exhibitions, and pictures.

§ 311. Every person who willfully and lewdly, either:

One. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

Two. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number

of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

Three. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

Four. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

Five. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby;

—Is guilty of a misdemeanor.

Legislation § 311. 1. Enacted February 14, 1872; almost identical with Field Draft, § 363, N. Y. Pen. Code, §§ 316, 317. The code commissioners say: "This and the three succeeding sections are based upon an act relative to obscene and lewd publications (Stats. 1859, p. 297), and an act relative to injurious publications (Stats. 1858, p. 204), extended to embrace cases not included within those acts, but which deserve light punishments, and follow the language of the New York Penal Code, [Field Draft,] §§ 363, 365, 366." 2. Amended by Code Amdts. 1878-74, p. 429, in subd. 4, omitting, before "or," at end of subdivision, "or any notice or advertisement for producing or facilitating a miscarriage."

#### Seizure of indecent articles authorized.

§ 312. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Legislation § 312. Enacted February 14, 1872; identical with Field Draft, § 364. See ante, Legislation § 311, for code commissioners' note.

#### Their character to be summarily determined.

§ 313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture,

print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

**Legislation § 313.** Enacted February 14, 1872; the language employed being almost that of part of Field Draft, § 365. See ante, Legislation § 311, for code commissioners' note.

#### **Their destruction.**

§ 314. Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

**Legislation § 314.** 1. Enacted February 14, 1872; almost identical with Field Draft, § 366. See ante, Legislation § 311, for code commissioners' note. 2. Amendment by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante.

#### **Keeping or residing in house of ill-fame. Proof.**

§ 315. Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it.

**Legislation § 315.** 1. Enacted February 14, 1872 (based on Stats. 1855, p. 76, § 1), and then ended with the words "guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 668; the code commissioner saying, "The new matter is taken from the statute of 1866, as amended 1873-74, p. 84, and makes the reputation of the house evidence of its character and of that of the women resorting to it."

**Citations.** Cal. 88/102; 147/292; 150/118. App. 7/291, 294.

**Living in or keeping house of ill-fame:** See post, § 647.

#### **Keeping disorderly houses.**

§ 316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate



neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

**Legislation § 316.** 1. Enacted February 14, 1872 (identical with Field Draft, § 368, N. Y. Pen. Code, § 322), and then read: "Every person who keeps any disorderly house or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1873-74, p. 430.

**Citations.** Cal. 114/93; 127/35; 147/292, 545; 150/118; 152/49.

**Advertising to produce miscarriage.**

§ 317. Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony.

**Legislation § 317.** Added by Code Amdts. 1873-74, p. 430.

**Prevailing upon any person to visit a place kept for gambling or prostitution, a misdemeanor.**

§ 318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment.

**Legislation § 318.** Added by Code Amdts. 1880, p. 40.

**Citations.** Cal. 150/118.

## CHAPTER IX.

## Lotteries.

- § 319. Lottery defined.
- § 320. Punishment for drawing lottery.
- § 321. Punishment for selling lottery tickets.
- § 322. Aiding lotteries.
- § 323. Lottery-offices. Advertising lottery-offices.
- § 324. Insuring lottery tickets. Publishing offers to insure.
- § 325. Property offered for disposal in lottery forfeited.
- § 326. Letting building for lottery purposes.

**Lottery defined.**

§ 319. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift-enterprise, or by whatever name the same may be known.

Legislation § 319. Enacted February 14, 1872; based on Field Draft, § 370, N. Y. Pen. Code, § 323; Stats. 1861, p. 229, § 2. The code commissioners say: "This section and the succeeding ones relating to lotteries are founded upon an act to prohibit lotteries, etc. (Stats. 1861, p. 229.) No material changes in the legal effect have been made, but the commissioners have to some extent followed the language of the New York Penal Code [Field Draft] (§§ 370, 372, 373, 375, 377, 379, 381, 382), having in view greater terseness of expression."

Citations. Cal. 68/289; 70/638.

Evidence on prosecution for selling lottery tickets: See post, § 1109.

**Punishment for drawing lottery.**

§ 320. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Legislation § 320. Enacted February 14, 1872; based on Field Draft, § 372, N. Y. Pen. Code, § 325; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

Citations. Cal. 91/440.

**Punishment for selling lottery tickets.**

§ 321. Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance,

share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

**Legislation § 321.** Enacted February 14, 1872; almost identical with Field Draft, § 373, N. Y. Pen. Code, § 326; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

**Citations.** Cal. 70/638; 92/652.

#### **Aiding lotteries.**

§ 322. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

**Legislation § 322.** Enacted February 14, 1872; based on Field Draft, § 375, N. Y. Pen. Code, § 327; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

#### **Lottery-offices. Advertising lottery-offices.**

§ 323. Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

**Legislation § 323.** Enacted February 14, 1872; based on Field Draft, § 377, N. Y. Pen. Code, § 329; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

#### **Insuring lottery tickets. Publishing offers to insure.**

§ 324. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or

without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

**Legislation § 324.** Enacted February 14, 1872; based on Field Draft, § 879, N. Y. Pen. Code, § 330; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

**Property offered for disposal in lottery forfeited.**

§ 325. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the state, and may be recovered by information filed, or by any action brought by the attorney-general, or by any district attorney, in the name of the state. Upon the filing of the information or complaint, the clerk of the court, or if the suit be in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments issued from the district courts in civil cases.

**Legislation § 325.** Enacted February 14, 1872; based on Field Draft, § 881, N. Y. Pen. Code, § 332; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

**Letting building for lottery purposes.**

§ 326. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

**Legislation § 326.** Enacted February 14, 1872; based on Field Draft, § 882, N. Y. Pen. Code, § 333; Stats. 1861, p. 229. See ante, Legislation § 319, for code commissioners' note.

**Citations.** Cal. 68/289; 91/440; 93/489.

## CHAPTER X.

## Gaming.

- § 330. Gaming prohibited. Penalty.
- § 331. Permitting gambling in houses owned or rented.
- § 332. Winning at play by fraudulent means.
- § 333. Witnesses neglecting or refusing to attend trial.
- § 334. Witness's privilege.
- § 335. Duties of district attorneys, sheriffs, and others.
- § 336. Permitting minor to play in saloon.
- § 337. To issue a license to carry on forbidden games, a felony.
- § 337a. Pool-selling, book-making, bets and wagers. Penalty.

Code commissioners' note to Chapter X. "This chapter is founded on the statute of 1860, p. 69, and the statute of 1863, p. 723. The language has been modified."

## Gaming prohibited. Penalty.

§ 330. Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of said prohibited games, is guilty of a misdemeanor, and shall be punished by a fine not less than one hundred dollars nor not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months; or by both such fine and imprisonment.

Legislation § 330. 1. Enacted February 14, 1872 (based on Stats. 1868, p. 723, § 1; 14 Cal. 29; 14 Cal. 566), and then read: "Every person who deals, plays, or carries on, opens or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, or any banking game played with cards, dice, or any other device, for money, checks, credit, or any other representative of value, is punishable by fine of not less than two hundred nor more than one thousand dollars, and shall be imprisoned in the county jail until such fine and costs of prosecution are paid, such imprisonment not to exceed one year." 2. Amended by Stats. 1885, p. 135, (1) adding (a) "tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one," and (b) "or percentage" after "any banking"; (2) omitting "other" before "device"; (4) adding, at end of section, "and every person who plays or bets at or against any of said prohibited game or games, is guilty of a misdemeanor." 3. Amended by Stats. 1891, p. 57.

Citations. Cal. 47/128; 53/247; 60/82; 63/299, 300, 301; 64/157, 158, 159, 162; 70/516; 80/155; 82/182; 84/166, 167; 85/581; 128/29; 137/16; 152/49. App. 8/305.

#### **Permitting gambling in houses owned or rented.**

§ 331. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Legislation § 331. Enacted February 14, 1872; based on Stats. 1860, p. 69, § 4.

#### **Winning at play by fraudulent means.**

§ 332. Every person who by the game of "three-card monte," so called, or any other game, device, sleight-of-hand, pretensions to fortune-telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value.

Legislation § 332. 1. Enacted February 14, 1872 (based on Field Draft, § 388, N. Y. Pen. Code, § 339), and then read: "Every person who, by any fraud, cheat, or device, or false pretense whatsoever, while playing at any game of chance, or while bearing any share in wagers played for, or while betting on sides or hands of such play, wins or acquires to himself or another any sum of money or valuable thing, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1877-78, p. 115, to read: "Every person who, by fraud, device, cheat, trick, or any false pretense whatsoever, while playing or pretending to play at any game of chance, or while bearing any share in a wager or wagers played for, or while betting on sides or hands of such play or pretended play; or who, by means of bunko, string game, three-card monte, thimberlig, top-and-bottom, or other pretended game of chance, or cheating game, or device, or acquires to himself or another, any sum of money or valuable thing, is guilty of a felony, and on conviction shall be punished accordingly." 3. Amended by Code Amdts. 1880, p. 40.

Citations. Cal. 107/152; 110/601, 602, 603; 122/357.

#### **Witnesses neglecting or refusing to attend trial.**

§ 333. Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

Legislation § 333. Enacted February 14, 1872; based on Stats. 1860, p. 69, § 5.

**Witness's privilege.**

§ 334. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

Legislation § 334. Enacted February 14, 1872 (Field Draft, § 891, N. Y. Pen. Code, § 842); based on Stats. 1860, p. 69, § 2.

**Duties of district attorneys, sheriffs, and others.**

§ 335. Every district attorney, sheriff, constable, or police-officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

Legislation § 335. Enacted February 14, 1872; based on Stats. 1868, p. 723, § 1.

Citations. Cal. 147/529, 533.

**Permitting minor to play in saloon.**

§ 336. Every owner, lessee, or keeper of any house used in whole, or in part, as a saloon or drinking-place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor.

Legislation § 336. Added by Code Amdts. 1878-74, p. 461.

**To issue a license to carry on forbidden games, a felony.**

§ 337. Every state, county, city, city and county, town, or township officer, or other person who shall ask for, receive, or collect any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person from arrest or conviction for a violation of section three hundred and thirty of the Penal Code; or who shall issue, deliver, or cause to be given or delivered to any person or persons, any license, permit, or other privilege, giving, or pretending to give, any authority or right to any person or persons to

carry on, conduct, open, or cause to be opened, any game or games which are forbidden or prohibited by section three hundred and thirty of said code; and any of such officer or officers who shall vote for the passage of any ordinance or by-law, giving, granting, or pretending to give or grant to any person or persons any authority or privilege to open, carry on, conduct, or cause to be opened, carried on, or conducted, any game or games prohibited by said section three hundred and thirty of the Penal Code, is guilty of a felony.

Legislation § 337. Added by Stats. 1885, p. 118.

**Pool-selling, book-making, bets and wagers. Penalty.**

§ 337a. Every person, who engages in pool-selling or book-making at any time or place; or who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, or who records or registers bets or wagers, or sells pools, upon the result of any trial or contest of skill, speed or power of endurance, of man or beast or between men or beasts, or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value, bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such result; or who, being the owner, lessee, or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any grounds within this state, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depository for gain, hire or reward of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged upon any such result; or who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is punishable by imprisonment in a county jail or state prison for a period of not less than thirty days and not exceeding one year.

Legislation § 337a. Added by Stats. 1909, p. 21.



## CHAPTER XI.

## Pawnbrokers.

- † 338. Pawnbroking without license.
- § 339. Pawnbrokers, register to be kept.
- § 340. Pawnbrokers, what interest may charge.
- § 341. Selling before time of redemption has expired, or without notice.
- § 342. Refusing to disclose particulars of sale.
- § 343. Inspection of register by officer.
- § 344. Junk dealers, application of code sections to.

Code commissioners' note to Chapter XI. ". . . Based upon the provisions of the act of April 17, 1861, relating to pawnbrokers. (Stats. 1861, p. 184.)"

## Pawnbroking without license.

§ 338. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license, is guilty of a misdemeanor.

Legislation § 338. Enacted February 14, 1872 (Field Draft, § 401, N. Y. Pen. Code, § 353); based on Stats. 1861, p. 184.

Citations. Cal. 150/187, 188, 193.

Pledge from minor under sixteen: See post, § 501.

Pledge: See Civ. Code, §§ 2986-3011.

## Pawnbrokers, register to be kept.

§ 339. Every person who carries on the business of a pawnbroker, or who purchases gold bars, gold-quartz or gold bullion or mineral containing gold, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or estimated value of the property purchased, or the name and residence of the pledgor or seller, or to deliver to the pledgor or seller a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor.

Legislation § 339. 1. Enacted February 14, 1872 (based on Stats. 1861, p. 184, § 1), and then read: "Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledgor, or

to deliver to the pledgor a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor." 2. Amended by Stats. 1909, p. 367; the act amending this section and § 343, post, containing a section reading, "Sec. 3. Providing that nothing in this act shall apply to persons or corporations doing a banking business in this state." •

Citations. Cal. 150/188, 198.

This section applies to junk dealers: See post, § 344.

#### **Pawnbrokers, what interest may charge.**

§ 340. Every pawnbroker who charges or receives interest at the rate of more than two per cent per month, or who by charging commissions, discount, storage, or other charge, or by compounding increases, or attempts to increase, such interest, is guilty of a misdemeanor.

Legislation § 340. 1. Enacted February 14, 1872 (based on Stats. 1861, p. 184, § 8), and then had the words "four per cent" instead of "two per cent," as at present. 2. Amended by Stats. 1881, p. 75.

Citations. Cal. 67/360.

#### **Selling before time of redemption has expired, or without notice.**

§ 341. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold, and specifying the time and place of sale, is guilty of a misdemeanor.

Legislation § 341. Enacted February 14, 1872 (Field Draft, § 403, N. Y. Pen. Code, § 855); based on Stats. 1861, p. 184, § 4.

#### **Refusing to disclose particulars of sale.**

§ 342. Every pawnbroker who willfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor.

Legislation § 342. Enacted February 14, 1872; based on Stats. 1861, p. 184.

This section applies to junk dealers: See post, § 344.

**Inspection of register by officer.**

§ 343. Every pawnbroker or person who purchases gold bullion, gold bars or gold-quartz or mineral containing gold, who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property or to any person appointed by the sheriff or head of the police department of any city, city and county or town, or an order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor.

**Legislation § 343.** 1. Enacted February 14, 1872 (based on Stats. 1861, p. 184, § 6), and then read: "Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 668, adding "or appointed by the sheriff of the county or the head of the police department of any city, city and county, or town to inspect such register, or examine such articles or account of sales," before "is guilty," at end of section. 4. Amended by Stats. 1909, p. 367; the act amending this section and § 339, ante, containing a section reading, "Sec. 3. Providing that nothing in this act shall apply to persons or corporations doing a banking business in this state."

**This section applies to junk dealers: See post, § 344.**

**Junk dealers, application of code sections to.**

§ 344. Sections three hundred and thirty-nine, and three hundred and forty-two, and three hundred and forty-three of the Penal Code are applicable to the persons carrying on the business of junk dealers, their clerks, employees, or servants, and to persons acting as brokers or commission agents for such persons, and apply to their transactions of purchase and sale as well as to those of pledge or mortgage.

**Legislation § 344.** 1. Enacted February 14, 1872, as § 502, and then read: "502. Sections 339, 342, and 343 of the Penal Code are applicable to persons carrying on the business of junk dealers, and apply to their transactions of purchase and sale, as well as to those of pledge or mortgage." 2. Repealed by Stats. 1901, p. 75, and added as a new section, numbered 344, reading as the text supra, by the act repealing § 502. 3. Addition by Stats. 1901, p. 452; unconstitutional: See note, § 5, ante. See post, Legislation § 502.

## CHAPTER XII.

## Other Injuries to Persons.

- § 346. Acts of intoxicated physicians.
- § 347. Willfully poisoning food, medicine, or water.
- § 347a. Poisonous substance, how sold and labeled. To whom sold. Entry of sale to be made. Penalty. Not to apply to prescriptions.
- § 348. Mismanagement of steamboats.
- § 349. Mismanagement of steam-boilers.
- § 349a. Frauds in stamping and labeling produce and manufactured goods.
- § 350. Counterfeiting trade-marks.
- § 351. Selling goods which bear counterfeit trade-marks.
- § 352. Definition of the phrase "counterfeited trade-marks," etc.
- § 353. "Trade-mark" defined.
- § 354. Refilling casks, etc., bearing trade-mark.
- § 354½. Selling or refilling casks, etc., containing trade-mark.
- § 354¾. Destroying or defacing trade-mark.
- § 355. Defacing marks upon wrecked property and destroying bills of lading.
- § 356. Defacing marks upon logs, lumber, or wood.
- § 357. Changing or defacing marks or brands on domestic animals. Penalty.
- § 357½. Changing or defacing brands on domestic animals, a misdemeanor.
- § 358. Frauds in affairs of special partnership.
- § 359. Contracting or solemnizing incestuous or forbidden marriages.
- § 360. Performing marriage ceremony before license is presented. Failure to record license and marriage certificate. False record of marriage return.
- § 361. Cruel treatment of lunatics, etc.
- § 362. Refusing to issue or obey writ of habeas corpus.
- § 363. Reconfining persons discharged upon writ of habeas corpus.
- § 364. Concealing persons entitled to benefit of habeas corpus.
- § 365. Innkeepers and carriers refusing to receive guests and passengers.
- § 366. Counterfeiting quicksilver stamps.
- § 367. Selling debased quicksilver.
- § 367a. Unauthorized use of dramatic or musical compositions.
- § 367b. Hazing, a misdemeanor.

## Acts of intoxicated physicians.

§ 346. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

Legislation § 346. Enacted February 14, 1872; based on Field Draft, § 404, N. Y. Pen. Code, § 357.

**Willfully poisoning food, medicine, or water.**

§347. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years.

Legislation § 347. Enacted February 14, 1872; based on Field Draft, § 405, N. Y. Pen. Code, § 358; also based on Stats. 1856, p. 181, § 3. The code commissioners say: "Founded upon § 3 of act of 1856, relative to offenses against the person (Stats. 1856, p. 181), and extended to include cases deserving like punishment."

Regulation of sale of poisons: See post, § 347a.

**Poisonous substance, how sold and labeled. To whom sold. Entry of sale to be made. Penalty. Not to apply to prescriptions.**

§347a. No person must retail any arsenic, corrosive sublimate, hydrocyanic acid, cyanide of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux vomica, henbane, tansy, savin, ergot, cottonroot, digitalis, chloroform, chloral hydrate, or any preparation, compound, salt, extract or tincture, of such substances, except preparations of opium containing less than two grains to the fluid ounce, white precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton-oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, or any preparation, compound, salt, extract, or tincture, of such substances, without first distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor must any such sale be made to any person, unless it is found, on due inquiry, that he is aware of its poisonous character, and that it is to be used for a legitimate purpose. Nor must any person retail any of such substances, unless, before delivering the same, he makes, or causes to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address, of the purchaser, the name and quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser.

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Such book must always be open to inspection by the proper authorities. A person dispensing any of the substances enumerated must ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified. Every person who violates any of the provisions of this section is guilty of a misdemeanor, and punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to the prescriptions of any physician authorized to practice medicine under the laws of this state.

**Legislation § 347a.** 1. Addition by Stats. 1901, p. 453; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 765; the code commissioner saying, "This is a codification of the statute of 1880, p. 102."

#### **Mismanagement of steamboats.**

§ 348. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony.

**Legislation § 348.** 1. Enacted February 14, 1872 (based on Field Draft, § 407, N. Y. Pen. Code, §§ 360, 361), and then had the word "misdemeanor" instead of "felony," at end of section. 2. Amended by Code Amdts. 1873-74, p. 431. 3. Amendment by Stats. 1901, p. 453; unconstitutional: See note, § 5, ante.

#### **Mismanagement of steam-boilers.**

§ 349. Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

**Legislation § 349.** 1. Enacted February 14, 1872 (based on Field Draft, § 408, N. Y. Pen. Code, § 362), and then had the word "misdemeanor" in-

stead of "felony," at end of section. 2. Amended by Code Amdts. 1873-74, p. 431.

As to personal injuries, see Civ. Code, §§ 43, 1703, 1714, 1969-1971, 2096, 2100.

#### **Frauds in stamping and labeling produce and manufactured goods.**

§ 349a. Any person engaged in the production, manufacture, or sale of any article of merchandise made in whole or in part in this state, who, by any imprint, label, trade-mark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresents or falsely states the kind, character, or nature of the labor employed or used, or the extent of the labor employed or used, or the number or kind of persons exclusively employed or used, or that a particular or distinctive class or character of laborers was wholly and exclusively used or employed, when, in fact, another class, or character, or distinction of laborers was used or employed, either jointly or in any wise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, or upon the cask, box, case, or package containing the same, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or both.

**Legislation § 349a.** 1. Addition by Stats. 1901, p. 454; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 669; the code commissioner saying, "This is a codification of the statute of 1886-87, p. 17."

#### **Counterfeiting trade-marks.**

§ 350. Every person who willfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged, or counterfeited, any trade-mark usually affixed by any person to his goods, which has been duly recorded in the office of the secretary of state, or with the commissioner of patents in the United States patent-office, or any label or brand, composed in whole or in part of a reproduction of said trade-mark, or who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trade-mark, with in-

tent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged, or counterfeited trade-mark, or label, or brand is affixed, or intended to be affixed, as the goods of the person, firm, company, or corporation owning the said trade-mark, is guilty of a misdemeanor.

**Legislation § 350.** 1. Enacted February 14, 1872. Field Draft, § 410, N. Y. Pen. Code, § 364. The code commissioners say: "This and the three succeeding sections are based on the act of March 2, 1853. (Stats. 1853, p. 33.) Their object is the protection of the purchaser as well as the manufacturer, and for this reason include within their scope everything that falls within the broadest definition of 'trade-mark.' The remaining sections of this chapter, relative to trade-marks, are based upon the act of April 2, 1863 (Stats. 1863, p. 155), and are limited in their operation to the statutory trade-marks, etc. (N. Y. Pen. Code, [Field Draft,] §§ 410, 412.)" When enacted in 1872, § 350 read: "Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor." 2. Amended by Stats. 1885, p. 57, adding, after "to his goods," the words "which has been duly recorded in the office of the secretary of state." 3. Amended by Stats. 1897, p. 212.

**Fraud in stamping and labeling produce and manufactured goods, prevention of:** See ante, § 349a.

**Trade-marks:** See Civ. Code, §§ 655, 991; Pol. Code, §§ 3196-3201.

### **Selling goods which bear counterfeit trade-marks.**

§ 351. Every person who sells, or keeps for sale, or manufactures or prepares, for the purpose of sale, any goods upon or to which any reproduced, copied, imitated, forged, or counterfeited trade-mark, or label, or brand, composed in whole or in part of such a reproduced, copied, imitated, forged, or counterfeited trade-mark, has been affixed, after such trade-mark has been recorded in the office of the secretary of state, or with the commissioner of patents in the United States patent-office, intending to represent such goods as the genuine goods of the person, firm, company, or corporation owning the said trade-mark, knowing the same to be reproduced, copied, imitated, forged, or counterfeited, is guilty of a misdemeanor.

**Legislation § 351.** 1. Enacted February 14, 1872 (based on Field Draft, § 412, N. Y. Pen. Code, § 364), and then read: "Every person who sells or keeps for sale any goods upon or to which any counterfeited trade-mark has been affixed, intending to represent such goods as the genuine goods of an-



other, knowing the same to be counterfeited, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1885, p. 57, adding, after "has been affixed," the words "after such trade-mark has been recorded in the office of the secretary of state." 3. Amended by Stats. 1897, p. 213.

Guinness of trade-mark warranted by sale of article bearing it: Civ. Code, § 1772.

**Definition of the phrase "counterfeited trade-marks," etc.**

§ 352. The phrases "forged trade-mark" and "counterfeited trade-mark," or their equivalents, as used in this chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive.

Legislation § 352. Enacted February 14, 1872.

**"Trade-mark" defined.**

§ 353. The phrase "trade-mark," as used in the three [four] preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

Legislation § 353. Enacted February 14, 1872; based on Field Draft, § 414 (26 Vict., c. lxxxviii, § 1), N. Y. Pen. Code, § 366.

**Refilling casks, etc., bearing trade-mark.**

§ 354. Every person who has in his possession, or who uses any cask, bottle, vessel, case, cover, label, brand, or other thing bearing, or having in any way connected with it, the trade-mark of another, which has been duly recorded in the office of the secretary of state, or with the commissioner of patents in the United States patent-office, or the trade name of another, for the purpose of disposing of any article other than that which such cask, bottle, vessel, case, cover, label, brand, or other thing originally contained, or is connected with by the owner of such trade-mark or trade name, with intent to deceive or defraud, is guilty of a misdemeanor.

Legislation § 354. 1. Enacted February 14, 1872 (based on Stats. 1863, p. 155, § 6), and then read: "Every person who has or uses any cask, bottle, vessel, case, cover, label, or other thing bearing or having in any way con-

nected with it the duly filed trade mark or name of another, for the purpose of disposing with intent to deceive or defraud of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing originally contained or was connected with by the owner of such trade mark or name, is guilty of a misdemeanor." 2. Amended by Stats. 1897, p. 213.

Counterfeiting trade-marks: Ante, §§ 350, 351.

#### **Selling or refilling casks, etc., containing trade-mark.**

§ 354½. Every person who willfully sells, or traffics in any cask, keg, bottle, vessel, siphon, can, case, or other package bearing the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon, or refills any such cask, keg, bottle, vessel, siphon, can, case, or other package with intent to defraud the owner thereof, without the consent of the owner thereof, or unless the same shall have been purchased from the owner thereof, is guilty of a misdemeanor.

Legislation § 354½. 1. Added by Stats. 1899, p. 103. 2. Amendment by Stats. 1901, p. 454, the only change made being to renumber the section 354a; unconstitutional: See note, § 5, ante.

#### **Destroying or defacing trade-mark.**

§ 354¾. Every person who shall willfully deface, erase, obliterate, cover up, or otherwise remove, destroy, or conceal the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, impressed, or otherwise attached to, or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, for the purpose of selling or trafficking in such cask, keg, bottle, vessel, siphon, can, case, or other package, or refilling such cask, keg, bottle, vessel, siphon, can, case, or other package, with intent to defraud the owner thereof, without the consent of the owner, or unless the same shall have been purchased from the owner, is guilty of a misdemeanor.

Legislation § 354¾. 1. Added by Stats. 1899, p. 87. 2. Amendment by Stats. 1901, p. 454, the only change made being to renumber the section 354b; unconstitutional: See note, § 5, ante.

#### **Defacing marks upon wrecked property and destroying bills of lading.**

§ 355. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or

who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

Legislation § 355. Enacted February 14, 1872; identical with Field Draft, § 420, N. Y. Pen. Code, § 872.

Wrecks and wrecked property: Pol. Code, §§ 2408 et seq.

**Defacing marks upon logs, lumber, or wood.**

§ 356. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Legislation § 356. Enacted February 14, 1872; based on Field Draft, § 421, N. Y. Pen. Code, § 878.

Citations. Cal. 128/443.

Floating lumber: Pol. Code, §§ 2889 et seq.

**Changing or defacing marks or brands on domestic animals. Penalty.**

§ 357. Every person who marks or brands, alters, or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, or calf belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the state's prison for not less than one nor more than five years.

Legislation § 357. 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 235, § 65, which read: "§ 65. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat, or pig, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one year, nor more than five years." When enacted in 1872, the section contained the names of other animals, after "calf," to wit, "sheep, goat, hog, shoat or pig." 2. Amended by Stats. 1901, p. 829.

Citations. Cal. 144/47; 145/111.

Marks and brands: Pol. Code, §§ 8167-8172, 8182-8185.

**Changing or defacing brands on domestic animals, a misdemeanor.**

§ 357½. Every person who marks or brands, alters or defaces the mark or brand of any sheep, goat, hog, shoat, or pig belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is guilty of a misdemeanor.

**Legislation § 357½.** Added by Stats. 1901, p. 327, becoming a law, under constitutional provision, without governor's approval.

**Frauds in affairs of special partnership.**

§ 358. Every member of a special partnership who commits any fraud in the affairs of the partnership, is guilty of a misdemeanor.

**Legislation § 358.** Enacted February 14, 1872; based on Field Draft § 423, N. Y. Pen. Code, § 875.

**Special partnership:** See Civ. Code, §§ 2477 et seq.

**Contracting or solemnizing incestuous or forbidden marriages.**

§ 359. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

**Legislation § 359.** Enacted February 14, 1872 (Field Draft, § 424, N. Y. Pen. Code, § 876); based on Stats. 1850, p. 424, §§ 2, 3, 4.

**Citations.** Cal. 75/12.

**Incestuous marriage defined:** See Civ. Code, § 59.

**Punishment of parties to incestuous marriage:** See ante, § 285.

**Performing marriage ceremony before license is presented. Failure to record license and marriage certificate. False record of marriage return.**

§ 360. Every person authorized to solemnize any marriage, who solemnizes such marriage without first being presented with the marriage license, as required by section seventy-two of the Civil Code of this state, or who willfully makes a false return of any marriage or pretended marriage to the recorder; or who, having solemnized a marriage, fails for more than thirty days, to file with such recorder the marriage license with the certificate indorsed thereon, as required by sections seventy-three and seventy-four of the Civil Code of this state; and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

**Legislation § 360.** 1. Enacted February 14, 1872; based on Stats. 1850, p. 425, § 11, which read: " § 11. If any person authorized to solemnize any marriage, shall willfully make a false return of any marriage, or pretended marriage, to the recorder, or if the recorder shall willfully make a false record of any return of a marriage, he shall be deemed guilty of a misdemeanor, and shall be punished by fine not less than one hundred nor more than ten thou-

sand dollars, and by imprisonment of not less than three months nor more than ten years." When enacted in 1872, § 360 read: "Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section." 2. Amendment by Stats. 1901, p. 454; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 669; the code commissioner saying, "The change consists of the clause making it criminal to solemnize a marriage without being first presented with a marriage license, and the clause making it criminal to fail to file for record the marriage license and the certificate of marriage. The last of these amendments, besides being otherwise proper, is necessary in order to give effect to the amendment to § 79a of the Civil Code, which provides that a license must be procured in every case, and regardless of whether the parties are, or are not, members of some particular religious denomination having, as such, some peculiar mode of celebrating marriage."

Citations. Cal. 75/13.

Certificate of marriage: Civ. Code, § 78.

Recording certificate of marriage: Civ. Code, § 74.

Person authorized to solemnize marriage: Civ. Code, § 70.

#### **Cruel treatment of lunatics, etc.**

§ 361. Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Legislation § 361. Enacted February 14, 1872; based on Field Draft, § 425, N. Y. Pen. Code, § 377.

#### **Refusing to issue or obey writ of habeas corpus.**

§ 362. Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Legislation § 362. Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 334, §§ 9, 89.

#### **Reconfining persons discharged upon writ of habeas corpus.**

§ 363. Every person who, either solely or as member of a court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

Legislation § 363. Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 334. The code commissioners say: "The word 'unlawfully' is inserted to exclude from the operation of the section a class of

cases in which persons discharged may be rearrested or recommitted for the same offense."

False imprisonment: See ante, § 236.

Habeas corpus, writ of: Post, §§ 1473 et seq.

#### **Concealing persons entitled to benefit of habeas corpus.**

§ 364. Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Legislation § 364. Enacted February 14, 1872 (Field Draft, § 428, N. Y. Pen. Code, § 380); based on Habeas Corpus Act, Stats. 1850, p. 387, § 89.

Habeas corpus: See chapter concerning the writ of, post, §§ 1473 et seq.

#### **Innkeepers and carriers refusing to receive guests and passengers.**

§ 365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Legislation § 365. 1. Enacted February 14, 1872; identical with Field Draft, § 429, N. Y. Pen. Code, § 381. 2. Amendment by Stats. 1901, p. 454; unconstitutional: See note, § 5, ante.

Common carriers of passengers: Civ. Code, §§ 2168-2176, 2180-2191.

Innkeepers: Civ. Code, §§ 1859 et seq.

Act punishing refusal to sell ticket: See post, Appendix, tit. "Emigration."

#### **Counterfeiting quicksilver stamps.**

§ 366. Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony.

Legislation § 366. Enacted February 14, 1872.

Counterfeiting trade-marks: See ante, §§ 850 et seq.

#### **Selling debased quicksilver.**

§ 367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor.

Legislation § 367. Enacted February 14, 1872.

Frauds in stamping and labeling produce and goods: See ante, §§ 349a et seq.

**Unauthorized use of dramatic or musical compositions.**

§ 367a. Any person who causes to be publicly performed or represented for profit any unpublished or undedicated dramatic composition or dramatic-musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, or who sells a copy or a substantial copy of any unpublished, undedicated or copyrighted dramatic composition or musical or dramatic-musical composition, known as an opera, without the consent of the author or proprietor of such dramatical or dramatic-musical composition shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty (50) dollars, and not more than three hundred (300) dollars, or be imprisoned for not less than thirty (30) days [n]or more than three (3) months, or both such fine and imprisonment.

Legislation § 367a. Added by Stats. 1905, p. 248.

**Hazing, a misdemeanor.**

§ 367b. Whosoever being a student, or being a person in attendance at any public, private, parochial, or military school, college, or other educational institution, conspires to haze or engages in hazing or commit any act that injures, degrades or disgraces, or tends to injure, degrade, or disgrace any fellow-student or person attending such institution shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or both.

Legislation § 367b. Added by Stats. 1907, p. 888.

## TITLE X.

## Crimes against the Public Health and Safety.

- § 868. Death from explosions, etc.
- § 869. Death from collision on railroads.
- § 869a. Street cars and dummies to be supplied with proper brakes and fenders.
- § 869b. Railroad companies transporting cattle, etc., confined in cars longer than a certain time without unloading and feeding. Charges a lien upon animals.
- § 869c. Obstructing highways by train of cars. [Unconstitutional addition.]
- § 869d. Closing of gates at railroad crossings.
- § 869e. Animals feeding along railroad tracks.
- § 869f. Railroad employee intoxicated while on duty.
- § 869g. Driving vehicles along track of railroad.
- § 870. "Public nuisances" defined.
- § 871. Unequal damage.
- § 872. Maintaining a nuisance, a misdemeanor.
- § 872a. Spitting prohibited, where.
- § 873. Establishing or keeping pest-houses within cities, towns, or villages.
- § 873a. Public nuisance. Penalty.
- § 874. Dead animals in streets, etc. Pollution of waters. Penalty.
- § 874½. Discharging coal-tar, or similar products, in navigable waters.
- § 875. Keeping gunpowder, etc., unlawfully.
- § 875a. Record of sale of explosives.
- § 876. Violation of quarantine laws by master of vessel.
- § 877. Willful violation of health laws.
- § 877a. State board of health, violation of rules of, relating to quarantine, etc.
- § 877b. State board of health, violation of rules of, relating to pollution of water.
- § 877c. State board of health, violation of rules of, relating to pollution of ice.
- § 878. Neglecting to perform duties under health law.
- § 879. Unlicensed piloting.
- § 880. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
- § 881. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
- § 881a. Penalty for rendering inaccurate, incorrect, or false tests as to dairy products.
- § 881b. State dairy bureau. Duty of, relating to the enforcement of the law on false tests of dairy products.
- § 882. Adulterating food, drugs, liquors, etc.
- § 883. Sale of adulterated or tainted food, or drink or drug. "Drug" defined. "Food" defined. Drugs deemed to be adulterated. Food deemed to be adulterated.
- § 883a. Sale of process or renovated butter.
- § 884. Setting woods, etc., on fire. Penalty for violation of section. Back-fires.



- § 384a. Keeping fires within certain limits. [Repealed.]
- § 384b. Camp-fire. [Repealed.]
- § 384c. Animals injured by persons hunting.
- § 385. Obstructing attempts to extinguish fires.
- § 386. Maintaining bridge or ferry without authority.
- § 387. Violating condition of undertaking to keep ferry.
- § 388. Riding or driving faster than a walk on toll-bridges.
- § 389. Crossing bridge, etc., without paying toll.
- § 390. Engineer of locomotive-engine omitting to ring bell when crossing highway.
- § 391. Intoxication of engineers, conductors, or drivers of locomotives or cars.
- § 392. Placing passenger-cars in front of freight-cars.
- § 393. Violation of duty by employees of railroad companies.
- § 394. Exposing person infected with any contagious disease in a public place.
- § 395. Frauds practiced to affect the market price.
- § 396. Racing upon highways.
- § 397. Sale of liquor to drunkards and Indians.
- § 397a. Furnishing liquor to persons addicted to inordinate use thereof. [Unconstitutional addition.]
- § 397b. Liquors, selling of, to minors. Permitting minor to visit saloons. Not to apply to parents.
- § 398. Selling firearms and ammunition to Indians.
- § 399. Death from mischievous animals.
- § 400. Exhibiting deformities.
- § 401. Aiding in suicide.
- § 401a. Cubic feet of space in rooms.
- § 402. Sale or exposure of animals having glanders, a misdemeanor.
- § 402a. Adulteration of candies.
- § 402b. Diseased animal to be killed.
- § 402c. Unsafe scaffolding, ladders, etc.
- § 402d. Animals affected with contagious diseases to be kept within inclosure.
- § 402e. Infectious diseases must be reported.
- § 402e. Laundry from hospitals.

#### Death from explosions, etc.

§ 368. Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

Legislation § 368. Enacted February 14, 1872.

Act to protect life and property against careless use of explosives: See post, Appendix, tit. "Explosives."

Record of sale of explosives: See post, § 375a.

#### Death from collision on railroads.

§ 369. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

Legislation § 369. Enacted February 14, 1872.

#### Street cars and dummies to be supplied with proper brakes and fenders.

§ 369a. Any person, company, or corporation, operating cars on the streets of cities or towns, or on the county roads within the state, for the conveyance of passengers, propelled by means of wire ropes attached to stationary engines, or by electricity or compressed air, who runs, operates, or uses any car or dummy, unless each car and dummy, while in use, is fitted with a brake capable of bringing such car to a stop within a reasonable distance, and a suitable fender, or appliance placed in front or attached to the trucks of such dummy or car, for the purpose of removing and clearing obstructions from the track, and preventing any obstacles, obstructions, or person on the track from getting under such dummy or car, and removing the same out of danger, and out of the way of such dummy or car, is guilty of a misdemeanor. Where the board of supervisors of any county, or the city council or other governing body of any city, by ordinance, order, or resolution, prescribes the fender or brake to be used as aforesaid, then a compliance with such ordinance, order, or resolution must be deemed a full compliance with the provisions of this section.

Legislation § 369a. 1. Addition by Stats. 1901, p. 454; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 766; the code commissioner saying, "This is a codification of the statute of 1899, p. 183."

**Railroad companies transporting cattle, etc., confined in cars longer than a certain time without unloading and feeding. Charges a lien upon animals.**

§ 369b. Any officer, agent or conductor of any company or person operating any railroad in this state, who in carrying and transporting cattle, sheep, or swine in car-load lots, confines the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest, water and feeding, for a period of at least ten consecutive hours, is guilty of a misdemeanor. In estimating such time of confinement, the period during which the animals have been confined without such rest on connecting roads from which they are received, must be computed. In case the owner or person in charge of such animals refuses or neglects to pay for the care and feed of animals so rested, the company or person operating such railroad may charge the expense thereof to the owner or consignee and retain a lien upon the animals therefor until the same is paid.

**Legislation § 369b.** 1. Addition by Stats. 1901, p. 455; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 672; the code commissioner saying, "This is a codification of § 2 of chapter 8 of the statute of 1877-78, p. 969."

**§ 369c. [Obstructing highways by train of cars.]**

**Legislation § 369c.** Addition by Stats. 1901, p. 455, and was designed to prohibit the obstruction of highways by freight trains; unconstitutional: See note, § 5, ante.

**Closing of gates at railroad crossings.**

§ 369d. Any person who enters upon or crosses any railroad, at any private passway, which is inclosed by bars or gates, and neglects to leave the same securely closed after him, is guilty of a misdemeanor.

**Legislation § 369d.** 1. Addition by Stats. 1901, p. 455; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 766; the code commissioner saying in his note to §§ 369d, 369e, 369f, "Codification of §§ 4, 5, and 6 of chapter 8 of the statute of 1877-78, p. 969."

**Animals feeding along railroad tracks.**

§ 369e. Any person who leads, drives, or conducts any beast along the track of a railroad, except where the railroad is built within

the limits of a public highway, or who places, or having the right to prevent it, suffers any animal to be placed within the fences thereof for grazing or other purposes, is guilty of a misdemeanor.

Legislation § 369e. 1. Addition by Stats. 1901, p. 456; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 767. See ante, Legislation § 869d, for code commissioner's note.

#### **Railroad employee intoxicated while on duty.**

§ 369f. Any person employed upon any railroad as engineer, conductor, baggage-master, brakeman, switchman, fireman, bridge-tender, flagman, or signalman, or having charge of the regulation or running of trains upon such railroad, in any manner whatever, who becomes or is intoxicated while engaged in the discharge of his duties, is guilty of a misdemeanor; and if any person so employed as aforesaid, by reason of such intoxication, does any act, or neglects any duty, which act or neglect causes the death of, or bodily injury to, any person or persons, he is guilty of a felony.

Legislation § 369f. 1. Addition by Stats. 1901, p. 456; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 767. See ante, Legislation § 869d, for code commissioner's note.

Intoxication of railroad employees: See post, § 891.

#### **Driving vehicles along track of railroad.**

§ 369g. Any person who rides, drives, or propels any vehicle upon and along the track of any railroad, through or over its private right of way, without the authorization of its superintendent or other officer in charge thereof, is guilty of a misdemeanor.

Legislation § 369g. Added by Stats. 1905, p. 767; the code commissioner saying, "The purpose of the section is to prevent persons without right, going upon and along a railroad track when it lies upon the private right of way of the owner, with a bicycle or other vehicle, thus creating liability to collision and endangering their own lives and those of persons upon passing trains." An unconstitutional § 369g was enacted by Stats. 1901, p. 456 (code commissioners' addition), and provided for the punishment of persons evading the payment of fares. See note, § 5, ante.

#### **"Public nuisances" defined.**

§ 370. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property

by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

**Legislation § 370.** 1. Enacted February 14, 1872 (almost identical with Field Draft, § 480, N. Y. Pen. Code, § 885; Crimes and Punishment Act, p. 244, § 124), and then read: "A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing any act, or omitting to perform any duty, which act or omission either: 1. Annoys, injures, or endangers the comfort, repose, health, or safety of any considerable number of persons; or, 2. Offends public decency; or, 3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; or, 4. In any way renders any considerable number of persons insecure in life or the use of property." 2. Amended by Code Amdts. 1873-74, p. 481.

**Citations.** Cal. 66/418; 72/58; 87/92, 98, 96; 92/574; 107/481; 118/150; 116/399; 121/513; 150/197. App. 6/726.

**Public nuisance:** Compare with Civ. Code, § 8460. See also §§ 8490-8495 of that code upon this subject generally.

**Nuisance, defined:** See Code Civ. Proc., § 781.

#### Unequal damage.

§ 371. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

**Legislation § 371.** 1. Enacted February 14, 1872 (identical with Field Draft, § 481, N. Y. Pen. Code, § 886), and then read: "An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of damage is unequal." 2. Amended by Code Amdts. 1873-74, p. 482.

#### Maintaining a nuisance, a misdemeanor.

§ 372. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

**Legislation § 372.** Enacted February 14, 1872; identical with Field Draft, § 482, N. Y. Pen. Code, § 887.

**Citations.** Cal. 72/53; 87/92, 93; 92/574.

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**Spitting prohibited, where.**

§ 372a. It shall be a misdemeanor for any person to discharge mucus from the nose or mouth or spit upon any sidewalk, of any public street or highway or upon any part of any public building or railroad train, street-car, stage, ferry-boat, steamer, boat or other vessel or vehicle used for the transportation of the public.

Legislation § 372a. Added by Stats. 1907, p. 106.

**Establishing or keeping pest-houses within cities, towns, or villages.**

§ 373. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest-house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Legislation § 373. Enacted February 14, 1872; based on Stats. 1852, p. 85, §§ 1, 2.

**Public nuisance. Penalty.**

§ 373a. Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health-officer or district attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.

Legislation § 373a. Added by Stats. 1903, p. 163.

**Dead animals in streets, etc. Pollution of waters. Penalty.**

§ 374. Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral, or butcher-shop into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, except it be in a crematory, the construction and operation of which is satis-

factory to the board of health of such city, town, or village; and every person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of any portion of the inhabitants of this state, so that the drainage of such water-closet, privy, carcass or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from any such water-closet, privy, carcass, or offal, may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven.

**Legislation § 374.** 1. Enacted February 14, 1872 (based on Stats. 1852, p. 100, § 1), and then read: "Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral, or butcher-shop, into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1875-76, p. 111, and then read same as the original code section down to the word "pond," thereafter proceeding, "reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, and every person who puts the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake, or reservoir, or who allows the carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any lands owned or occupied by him, or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so

that the waters thereof shall become polluted by reason thereof, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven of this code." 3. Amended by Stats. 1893, p. 68, and then read the same as the amendment of 1875-76 down to the words "or village," thereafter proceeding, "except it be in a cemetery, the construction and operation of which is satisfactory to the board of health in such city, town, or village; and every person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof shall become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor," the rest of the section reading as in 1875-76. 4. Amendment by Stats. 1901, p. 457; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 767, (1) changing (a) "except it be in a cemetery" to "except it be in a crematory," and (b) "in such city" to "of such city"; (2) omitting (a) "shall" before "become polluted," and (b) "of this code" at end of section. 6. Amended by Stats. 1907, p. 73, (1) changing "the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such" to "the supply of any portion of the inhabitants of this state, so that the drainage of such"; (2) adding "any" after "drainage from."

Citations. Cal. 105/687; 107/226; 115/450, 451; 186/16.

#### **Discharging coal-tar, or similar products, in navigable waters.**

§ 374½. Every person, firm, association, or corporation which shall discharge or deposit, or shall cause or suffer to be discharged or deposited, or to pass, in or into the waters of any navigable bay, or river, in this state, any coal-tar or refuse or residuary product of coal, petroleum, asphalt, bitumen, or other carbonaceous material or substance, is guilty of a misdemeanor, and for each offense is punishable by imprisonment in the county jail for not exceeding one year,



or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Legislation § 374½. Addition by Stats. 1901, p. 818.

**Keeping gunpowder, etc., unlawfully.**

§ 375. Every person who makes or keeps gunpowder, nitroglycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

Legislation § 375. Enacted February 14, 1872; based on Field Draft, § 423, N. Y. Pen. Code, § 389.

**Record of sale of explosives.**

§ 375a. It is the duty of each and every person, association, joint-stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitroglycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as it is made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint-stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance. Such journal or record-book must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser, or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient for identification. Such journal or record-book must be kept by the person, firm, association, joint-stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business at all times subject to the inspection and examination of the peace-officers, or other police authorities of the state, county, or municipality where the same is

situated, on proper demand made therefor. Any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace-officers or other police authorities on demand, is deemed a misdemeanor, and punishable accordingly. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint-stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction. The party instituting an action for such forfeiture shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing the suit.

**Legislation § 375a.** Addition by Stats. 1901, p. 457; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 768; the code commissioner saying, "This is a codification of §§ 1, 2, 3, and 4 of the statute of 1867, p. 110."

#### **Violation of quarantine laws by master of vessel.**

§ 376. Every master of a vessel subject to quarantine or visitation by the quarantine officer, who refuses or omits:

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival;

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any health-officer, by virtue of authority given him by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;

Is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

**Legislation § 376.** 1. Enacted February 14, 1872 (based on Field Draft, § 435, N. Y. Pen. Code, §§ 391, 392), (1) the introductory paragraph reading, "Every master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of San Francisco, who refuses or omits"; (2) in

subd. 1, had the word "or" at end of subdivision; (3) in subd. 2, had "health-officer" instead of "quarantine officer"; (4) in subd. 3, (a) did not have the article "the" before "quarantine," and (b) had "any of the officers of health, by virtue of authority given them," instead of "any health-officer, by virtue of authority given him." 2. Amended by Code Amdts. 1877-78, p. 116, differing from the original code section, (1) having, in subs. 1 and 2, "quarantine officer" instead of "health-officer;" (2) in subd. 3, adding "the" before "quarantine" in first instance. 3. Amendment by Stats. 1901, p. 458; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 769.

Quarantine and health regulations for San Francisco: Pol. Code, §§ 3004 et seq.

Ship-master's duties: Pol. Code, §§ 3013, 3014, 3016-3019.

#### Willful violation of health laws.

§ 377. Every person who is charged with a duty relating to the registration of deaths, under chapter three, title seven, of the act to establish a Political Code, approved March twelfth, eighteen hundred and seventy-two, who—

1. Willfully fails to keep a registry of the name, age, residence, and time of death of a decedent; or,
2. Willfully fails to register with the county recorder a certified copy of such register, as is provided for in said chapter; or,
3. Willfully inter, cremates, or otherwise disposes of any human body, in any city, county, or city and county, without having first obtained a permit, as provided for in said chapter; or,
4. Willfully grants a permit for the interment, cremation, or disposition of a dead human body, without the certificate provided for in said chapter; or,
5. Willfully violates any of the laws of this state relating to the preservation of the public health;

Is guilty of a misdemeanor, and is, unless a different punishment for such violation is prescribed by this code, punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Legislation § 377. 1. Enacted February 14, 1872 (Field Draft, § 441, N. Y. Pen. Code, §§ 397, 404), and then read: "Every person who willfully violates any of the laws of this state relating to the preservation of the public health, is, unless a different punishment for such violation is prescribed by this code, punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both." 2. Amended by Stats. 1889, p. 84.

Citations. Cal. 68/413: 84/306, §10.

Preservation of public health: Pol. Code. §§ 2978 et seq.

**State board of health, violation of rules of, relating to quarantine, etc.**

§ 377a. Every person who after notice shall violate, or who, upon the demand of any public health officer, shall refuse or neglect to conform to any rule, order or regulation prescribed by the state board of health respecting the quarantine, or disinfection of persons, animals, things or places, shall be guilty of a misdemeanor.

Legislation § 377a. Added by Stats. 1905, p. 143.

**State board of health, violation of rules of, relating to pollution of water.**

§ 377b. Any person who shall violate or refuse or neglect to conform to any sanitary rule, order or regulation prescribed by the state board of health for the prevention of the pollution of springs, streams, rivers, lakes, wells, or other waters used or intended to be used for human or animal consumption shall be guilty of a misdemeanor.

Legislation § 377b. Added by Stats. 1905, p. 138.

**State board of health, violation of rules of, relating to pollution of ice.**

§ 377c. Any person who shall violate, or refuse, or neglect, to conform to any sanitary rule, order or regulation prescribed by the state board of health for the prevention of the pollution of ice or the sale or disposition of polluted ice offered, kept or intended for public use or consumption, shall be guilty of a misdemeanor.

Legislation § 377c. Added by Stats. 1905, p. 138.

**Neglecting to perform duties under health law.**

§ 378. Every person charged with the performance of any duty under the laws of this state relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor.

Legislation § 378. Enacted February 14, 1872.

Citation. Cal. 84/310.

Preservation of public health: See Pol. Code, §§ 2978-3064.

**Unlicensed piloting.**

§ 379. Every person, not the master or owner, or not authorized to act as pilot under the laws of this state, who pilots or offers to pilot any vessel to or from any port of this state for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor.

**Legislation § 379.** 1. Enacted February 14, 1872; based on Stats. 1869-70, p. 348, § 17. 2. Amended by Code Amdts. 1873-74, p. 482, adding the words "not the master or owner, or," after "Every person."

**Pilots and pilotage:** See Pol. Code, §§ 2429-2447, 2457-2470, 2476-2491.

**Apothecary omitting to label drugs, or labeling them wrongfully, etc.**

§ 380. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

**Legislation § 380.** Enacted February 14, 1872; based on Field Draft, § 445, N. Y. Pen. Code, § 401.

**Sale of poisonous substances:** See ante, § 347a.

**Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.**

§ 381. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or pack-

age, with intent thereby to sell the goods therein or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense.

**Legislation § 381.** 1. Enacted February 14, 1872 (based on Field Draft, § 450, N. Y. Pen. Code, § 406), the section then ending with the words, "is punishable by a fine of twenty-five dollars for each offense," after "or package." 2. Amended by Code Amdt. 1878-74, p. 432, adding to and changing the phraseology after "or package."

**Act regulating sale of imitation olive-oil:** See post, Appendix, tit. "Olive-oil."

**Adulteration, acts relating to:** See post, Appendix, tit. "Adulteration."

**Penalty for rendering inaccurate, incorrect, or false tests as to dairy products.**

§ 381a. Any person, or persons, whether as principals, agents, managers, or otherwise, who buy or sell dairy products, or deal in milk, cream or butter, and who buy or sell the same upon the basis of their richness or weight or the percentage of cream, or butter-fat contained therein, who use any apparatus, test-bottle or other appliance, or who use the "Babcock test" or machine of like character for testing such dairy products, cream or butter, which is not accurate and correct, or which gives wrong or false percentages, or which is calculated in any way to defraud or injure the person with whom he deals, is guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned in the county jail not more than six (6) months.

**Legislation § 381a.** Added by Stats. 1901, p. 324.

**State dairy bureau. Duty of, relating to the enforcement of the law on false tests of dairy products.**

§ 381b. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of section three hundred and eighty-one a of the Penal Code and cause the prosecution of persons whom it knows, or has reason to believe, are guilty of violating the provisions of said section of the Penal Code. It shall be the duty of the district attorney of each and every county in the state to attend to the prosecution of all persons within his district against whom the state dairy bureau shall enter complaint for violating the provisions of said section of the Penal Code.

Said state dairy bureau shall from time to time inspect and examine as to their accuracy, or their adaptability to give accurate results, all glassware, measures, scales, weights and other apparatus used in creameries, and factories of dairy products where milk and cream are purchased, to determine the amount or percentage of fat in milk or cream. Said state dairy bureau shall supply at cost, and not oftener than once in a year, to every creamery, or other factory of dairy products where milk and cream, or either, are purchased, upon application not more than two tubes or bottles and one pipette of the forms used with the Babcock test, which it shall first examine as to accuracy, and if accurate, or adapted to give accurate results under the usual method of operating the Babcock test, said state dairy bureau shall certify to this by marking durably and permanently upon each and every piece of apparatus supplied the letters "D. B." Said state dairy bureau shall also upon payment at the rate of one dollar for each dozen, test or examine into the accuracy of all test-bottles or tubes and pipettes sent to it direct from any creamery, or other factory of dairy products where milk or cream are [is] purchased, and if found accurate, or adapted to give accurate results, the letters "D. B." shall be marked upon each piece of apparatus examined. The state dairy bureau shall pay all money received for making such tests for examinations into the state treasury and the same shall become a part of the appropriation for the use of the state dairy bureau and its disposition shall be at the disposal of the state dairy bureau in enforcing the provisions of this act.

Legislation § 381b. Added by Stats. 1905, p. 168.

#### **Adulterating food, drugs, liquors, etc.**

§ 382. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with the fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted; and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, or who, in response to an inquiry for any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, sells or offers for sale, a different article, or an article of a different character or manufacture, without first informing such purchaser of such difference, is

guilty of a misdemeanor; provided, that no retail dealer shall be convicted under the provisions of this section if he shall prove a written guaranty of purity obtained from the person from whom he purchased such adulterated or diluted goods.

**Legislation § 382.** 1. Enacted February 14, 1872. The code commissioners say: "This and the succeeding section is based upon § 125 of the Crimes and Punishment Act (Stats. 1850, p. 229), and upon the acts to prevent the adulteration of food, milk, etc. (Stats. 1860, p. 186; Stats. 1862, p. 484; Stats. 1869-70, p. 298). The commission follow the language of the New York Penal Code, [Field Draft,] §§ 451, 452." N. Y. Pen. Code, § 407. When enacted in 1872, § 382 read: "Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor." 2. Amended by Stats. 1901, p. 458; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1903, p. 351.

Acts relating to deception in sale of butter and cheese: See post, Appendix, tit. "Butter."

Adulteration, acts relating to: See post, Appendix, tit. "Adulteration."

**Sale of adulterated or tainted food, or drink or drug. "Drug" defined. "Food" defined. Drugs deemed to be adulterated. Food deemed to be adulterated.**

§ 383. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same is adulterated or has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drunk, with intent to permit the same to be eaten or drunk, is guilty of a misdemeanor, and must be fined not less than twenty-five nor more than one hundred dollars, or imprisoned in the county jail not exceeding one hundred days, or both, and may, in the discretion of the court, be adjudged to pay, in addition, all the necessary expenses, not exceeding fifty dollars, incurred in inspecting and analyzing such articles. The term "drug," as used herein, includes all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, includes all articles used for food or drink by man, whether simple, mixed, or compound. Any article is deemed to be adulterated within the meaning of this section:



(a) In case of drugs: (1) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs materially from the standard of strength, quality, or purity laid down therein; (2) If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work; (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity; (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; (4) If it is an imitation of, or is sold under the name of, another article; (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal; (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) If it contains any added substance or ingredient which is poisonous or injurious to health.

**Legislation § 383.** 1. Enacted February 14, 1872. (N. Y. Pen. Code, § 408.) See ante, Legislation § 382, for code commissioners' note. When enacted in 1872, § 383 read: "Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 459; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 769; the code commissioner saying, "The amendment is a consolidation of the present § 383 with the statute of 1895, p. 71. § 4 of the statute has, however, been omitted as unnecessary."

**Citations.** Cal. 126/867.

**Acts relating to adulteration:** See post, Appendix, tit. "Adulteration."

**Acts relating to deception in manufacture and sale of butter and cheese:** See post, Appendix, tit. "Butter."

**Act regulating sale of imitation olive-oil:** See post, Appendix, tit. "Olive-oil."

**Sale of process or renovated butter.**

§ 383a. Any person, firm, or corporation, who sells or offers for sale, or has in his or its possession for sale, any butter manufactured by boiling, melting, deodorizing, or renovating, which is the product of stale, rancid, or decomposed butter, or by any other process whereby stale, rancid, or decomposed butter is manufactured to resemble or appear like creamery or dairy butter, unless the same is plainly stenciled or branded upon each and every package, barrel, firkin, tub, pail, square, or roll, in letters not less than one half inch in length, "process butter," or "renovated butter," in such a manner as to advise the purchaser of the real character of such "process" or "renovated" butter, is guilty of a misdemeanor.

Legislation § 383a. 1. Addition by Stats. 1901, p. 460; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 770; the code commissioner saying, "The statute of 1899, p. 25 (repealed 1905: 470), is here re-enacted and codified."

Acts relating to deception in manufacture and sale of butter and cheese: See post, Appendix, tit. "Butter."

**Setting woods, etc., on fire. Penalty for violation of section. Back-fires.**

§ 384. Any person who shall willfully or negligently commit any of the acts hereinafter enumerated in this section shall be guilty of a misdemeanor, and upon conviction thereof be punishable by a fine of not less than twenty-five nor more than five hundred dollars, or imprisonment in the county jail not less than fifteen days nor more than six months, or both such fine and imprisonment, except, that in case of an offense against subsection five of this section, the fine imposed may be not less than ten dollars:

1. Setting fire, or causing or procuring fire to be set to any forest, woodland, brush, prairie, grass, grain, stubble or any other material being or growing on lands not his own, without the permission of the owner of such land; provided, that it shall be lawful to build, in a careful manner, camp-fires on any uninclosed lands, the owner of which has not forbidden such building of camp-fires thereon by personal notice or by posting such prohibition in conspicuous places or otherwise; and provided further, that before departing from the place where such camp-fire has been built, the builder of such fire first totally extinguishes the same.

2. Allowing fires, lawfully set, to escape from the control of the person having charge thereof, or to spread to the lands of any person other than the builder of such fire.

3. Building a fire on his own land for the purpose of burning brush, stumps, logs, rubbish, fallen timber, fallows, grass or any other thing whatsoever, or blasting wood with dynamite, powder or other explosives, or setting off fire-works in forest or brush-covered land, either his own or the property of another during a dry season; provided, that any state or district fire-warden may, in his reasonable discretion, give a written permit to any person desiring to build fires or blast as aforesaid; such permit shall contain such rules and regulations for the building and management of such fires as the state board of forestry may from time to time prescribe; and no person shall be convicted under this subsection, who shall upon the trial prove, affirmatively, that he has complied with all the rules and regulations so prescribed; and provided, further, that any person engaged in logging redwood may carefully use explosives or fire in the manner in which it is now customarily used in such logging.

4. Using any logging-locomotive, donkey or thrashing engine, or any other engine or boiler, except such as use oil exclusively for fuel, in or near any forest, brush or grass land, unless he shall prove upon the trial, affirmatively, that such engines or boilers used by him were provided with adequate devices to prevent the escape of fire or sparks from smoke-stacks, ash-pans, fire-boxes or other parts, and that he has used every reasonable precaution to prevent the causing of fire thereby.

5. Refusing or failing to comply with the summons of any fire-warden authorized to call out persons to aid in extinguishing forest fires, unless prevented by good and sufficient reasons.

No person shall be convicted under this section who shall have set, in good faith and with reasonable care, a back-fire for the purpose of stopping the progress of a fire then actually burning.

One half of all fines paid into any county treasury upon conviction under this section shall be paid by the county treasurer into the state treasury to the credit of the forestry fund.

Legislation § 384. 1. Enacted February 14, 1872 (based on Stats. 1852, p. 111, § 1), and then read: "384. Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods,

prairies, grasses, or grain, on any lands, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 460; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 758, reading the same as the original code section down to the words "on any lands," thereafter proceeding, "not his own, is guilty of a misdemeanor, and punishable by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both"; the code commissioner saying, "The amendment designates the punishment, and in this respect conforms the section to the statute of 1871-72, p. 96, on the same subject, and inserts after the word 'lands' the words 'not his own,' to conform the section to what was obviously the intent of the legislature."

4. Amended by Stats. 1907, p. 996.

Citations. Cal. 90/107; 98/270.

**§ 384a. [Keeping fires within certain limits. Repealed.]**

Legislation § 384a. 1. Addition by Stats. 1901, p. 460; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 758. 3. Repealed by Stats. 1907, p. 998.

**§ 384b. [Camp-fire. Repealed.]**

Legislation § 384b. 1. Addition by Stats. 1901, p. 460; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 758. 3. Repealed by Stats. 1907, p. 998.

**Animals injured by persons hunting.**

§ 384c. Every person who willfully or negligently, while hunting upon the inclosed lands of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

Legislation § 384c. 1. Addition by Stats. 1901, p. 460; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 673. 3. Amended by Stats. 1907, p. 566; the code commissioner saying, "The codification of § 4 of the statute of 1875-76, p. 408, respecting the wounding of animals while hunting upon the lands of another, was made by this section in 1905. In 1907 the section was amended by changing 'and' to 'or' between the words 'willfully' and 'negligently.'"

**Obstructing attempts to extinguish fires.**

§ 385. Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extin-

guished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Legislation § 385. Enacted February 14, 1872.

Fires and firemen: See Pol. Code, §§ 3385 et seq.

#### **Maintaining bridge or ferry without authority.**

§ 386. Every person who demands or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor.

Legislation § 386. Enacted February 14, 1872; based on Field Draft, § 459, N. Y. Pen. Code, § 415. The code commissioners say: "Founded on §§ 1 and 18 of act concerning ferries and bridges. (Stats. 1855, p. 188.)"

Public ferries and toll-bridges: Pol. Code, §§ 2848 et seq.

#### **Violating condition of undertaking to keep ferry.**

§ 387. Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor.

Legislation § 387. Enacted February 14, 1872; based on Field Draft, § 460, N. Y. Pen. Code, § 415.

Undertaking by ferryman: See Pol. Code, § 2850.

#### **Riding or driving faster than a walk on toll-bridges.**

§ 388. Every person who willfully rides or drives faster than a walk on or over any toll-bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars.

Legislation § 388. Enacted February 14, 1872; based on Stats. 1861, p. 18, § 1.

#### **Crossing bridge, etc., without paying toll.**

§ 389. Every person not exempt from paying tolls, who crosses on any ferry or toll-bridge, or passes through any toll-gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

Legislation § 389. Enacted February 14, 1872; based on Stats. 1861, p. 18, § 2.

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**Engineer of locomotive engine omitting to ring bell when crossing highway.**

§ 390. Every person in charge of a locomotive-engine who, before crossing any traveled public way, omits to cause a bell to ring or steam-whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

Legislation § 390. Enacted February 14, 1872; based on Field Draft, § 461, N. Y. Pen. Code, § 421.

Penalty of company in such cases: See Civ. Code, § 486.

**Intoxication of engineers, conductors, or drivers of locomotives or cars.**

§ 391. Every person who is intoxicated while in charge of a locomotive-engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train-dispatcher or as telegraph-operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

Legislation § 391. Enacted February 14, 1872. (Field Draft, § 462, N. Y. Pen. Code, § 420.) The code commissioners say in their note to the Penal Code Draft, "Founded upon § 52 of act to provide for the incorporation of railroad companies (Stats. 1861, p. 607)," and in their note to the original code section, "See Pol. Code, §§ 2920-2933. This section was amended so as to read as published in the text, by act of April 1, 1872: 'An Act to amend and in relation to the Political, Civil, and Penal Codes, and the Code of Civil Procedure,' now on file in the office of the secretary of state."

Driver addicted to intoxication: See Pol. Code, §§ 2932, 2933.

Intoxication of railroad employees: See ante, § 869f.

**Placing passenger-cars in front of freight-cars.**

§ 392. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight-car in the rear of passenger-cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight-car," as used in this section, does not include a baggage, express, or mail car.

Legislation § 392. Enacted February 14, 1872. (N. Y. Pen. Code, § 422.) The code commissioners say in their note to the Penal Code Draft, "Based upon § 47 of the Railroad Incorporation Act (Stats. 1861, p. 607)," and in their note to the original code section, "This section was amended so as to read as published in the text, by act of April 1, 1872: 'An Act to

amend and in relation to the Political, Civil, and Penal Codes, and the Code of Civil Procedure,' now on file in the office of the secretary of state."

**Violation of duty by employees of railroad companies.**

§ 393. Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

Legislation § 393. Enacted February 14, 1872; almost identical with Field Draft, § 463.

**Exposing person infected with any contagious disease in a public place.**

§ 394. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Legislation § 394. Enacted February 14, 1872; based on Field Draft, § 468, N. Y. Pen. Code, § 434.

**Frauds practiced to affect the market price.**

§ 395. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

Legislation § 395. Enacted February 14, 1872; identical with Field Draft, § 469, N. Y. Pen. Code, § 435.

**Racing upon highways.**

§ 396. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

Legislation § 396. Enacted February 14, 1872; identical with Field Draft, § 472, N. Y. Pen. Code, § 666.

**Sale of liquor to drunkards and Indians.**

§ 397. Every person who sells or furnishes or causes to be sold or furnished, intoxicating liquors to any habitual or common drunkard or to any Indian is guilty of a misdemeanor.

**Legislation § 397** 1 Enacted February 14 1877 based on Stats. 1850, p. 414 § 121 as amended by Stats. 1873, p. 179 § 1 and then read: "Every person who sells or furnishes or causes to be sold or furnished, intoxicating liquors to any Indian is guilty of a misdemeanor." 2. Amended by Code Annot. 1871-74, p. 462 adding "intoxicant or common drinkard, or," before "Indian." The section then reading as the amendment of 1903 (the present section) except that it did not have the words "to any" before "Indian." 3. Amended by Stats. 1888, p. 367 to read "Every person who sells or furnishes or causes to be sold or furnished, any intoxicating liquors to any Indian or person or persons, is guilty of a misdemeanor; or who sells or furnishes or causes to be sold or furnished, intoxicating liquors to any Indian is guilty of a felony." 4. Amended by Stats. 1897, p. 29, changing the section after the words "any Indian," to read, "is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by a fine not exceeding one thousand dollars, or both." 5. Amended by Stats. 1911, p. 461 amendatory in all. See note § 5, ante. 6. Amended by Stats. 1911, p. 471 being almost identical with the amendment of 1871-74, *q.v.* supra.

Comment: Cal. 105 145 146 147 148 174 178

Sale of liquor to persons addicted to inordinate use of, statute relating to: See post Appendix on "Intoxicating Liquors" c.

**§ 397A** [Furnishing liquor to persons addicted to inordinate use (deleted).]

**Legislation § 397A** Added by Stats. 1911, p. 461; unconstitutional: See note § 5, ante.

**Liquor, selling of, to minors. Furnishing minor to visit saloons. Not to apply to parents.**

**§ 397B** Every person who sells, gives or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; provided that this section shall not apply to the parents of such child, or to guardians of their wards.

**Legislation § 397B** 1 Added by Stats. 1911, p. 461, unconstitutional: See note § 5, ante. 2 Added by Stats. 1911, p. 471, the code commissioner



saying. "This is a codification of the statute of 1903, p. 319, respecting the sale of intoxicating liquors to children."

Citations. App. 7/529.

#### **Selling firearms and ammunition to Indians.**

§ 398. Every person who sells or furnishes to any Indian any firearm, or ammunition therefor, is guilty of a misdemeanor.

Legislation § 398. Enacted February 14, 1872; based on Stats. 1854, Kerr ed. p. 15, Redding ed. p. 24, § 1.

#### **Death from mischievous animals.**

§ 399. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

Legislation § 399. Enacted February 14, 1872.

#### **Exhibiting deformities.**

§ 400. Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall, by any artificial means, give to any person the appearance of a deformity, and shall exhibit such person for hire, shall be guilty of a misdemeanor.

Legislation § 400. Added by Code Amdts. 1873-74, p. 462. See infra, § 401, for § 400, passed at the same session of the legislature (Code Amdts. 1873-74, p. 433). See also, infra, § 402, for § 400, added by Code Amdts. 1880, p. 41.

#### **Aiding in suicide.**

§ 401. Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony.

Legislation § 401. 1. Added by Code Amdts. 1873-74, p. 433, as § 400, reading same as the amendment of 1905, which merely changed the number of the section. 2. Amendment by Stats. 1901, p. 461, renumbering the section 401, and adding the words "or attempt" before "suicide"; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 770, changing the section number from 400. See infra, § 402a, for § 401, added by Code

Amdts. 1877-78, p. 116. See also, *infra*, § 402b, for § 401, added by Code Amdts. 1880, p. 41.

#### Cubic feet of space in rooms.

§ 401a. Every person who owns, leases, lets, or hires to any person any room in any building, house, or other structure within the limits of any incorporated city, or city and county, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space in the clear for each person occupying such room or apartment, and every person found sleeping or lodging in, or who hires or uses for the purpose of sleeping or lodging in any room or apartment which contains less than five hundred cubic feet of space in the clear for each person so occupying such room or apartment, is guilty of a misdemeanor.

Legislation § 401a. 1. Addition by Stats. 1901, p. 461; unconstitutional: See note, § 5, *ante*. 2. Added by Stats. 1905, p. 770; the code commissioner saying, "This is a codification of the statute of 1875-76, p. 759, concerning lodging-houses and sleeping-apartments."

#### Sale or exposure of animals having glanders, a misdemeanor.

§ 402. Any person who shall knowingly sell, or offer for sale, or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or expose, any horse, mule, or other animal having the disease known as glanders or farcy, or who shall bring, or cause to be brought, or aid in bringing into this state any sheep, hog, horse, or cattle, or any domestic animal, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor.

Legislation § 402. 1. Added by Code Amdts. 1880, p. 41, as § 400, and then read: "400. Any person who shall knowingly sell, or offer for sale or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or expose any horse, mule, or other animal having the disease known as glanders, or farcy, shall be guilty of a misdemeanor." 2. Amended by Stats. 1889, p. 353 (in fact the addition of a new section), to read: "400. Any person, persons, company, or corporation, who shall bring, or cause to be brought, or aid in bringing into this state any sheep, hog, horse, or cattle of any kind, or any domestic animals of any kind, knowing the same to be affected with any contagious or infectious diseases, shall be guilty of a misdemeanor." 3. Amended by Stats. 1891, p. 26, consolidating the section as added in 1880 and the so-called amendment thereof in 1889, and renumbering the same § 402. Cf. the two sections, quoted *supra*.

Act to prevent spread of contagious diseases among animals: See post, Appendix, tit. "Animals."

#### Adulteration of candies.

§ 402a. Every person who adulterates candy by using in its manufacture terra-alba or other deleterious substances, or who sells or keeps for sale any candy or candies adulterated with terra-alba, or any other deleterious substance, knowing the same to be adulterated, is guilty of a misdemeanor.

Legislation § 402a. 1. Added by Code Amdts. 1877-78, p. 116, as § 401, and then read: "401. Every person who adulterates candy, by using in its manufacture terra-alba, or any other deleterious substance or substances, or who sells or keeps for sale any candy or candies adulterated with terra-alba or any other deleterious substance or substances, is guilty of a misdemeanor." 2. Amended by Stats. 1891, p. 27, (1) changing the section number from 401 to 402 ¼, and (2) amending it to read as at present, except that it had the word "any" before "other deleterious substances." 3. Amended by Stats. 1905, p. 771, (1) changing the section number from 402 ¼ to 402a, and (2) omitting the word "any" before "other deleterious substances," the omission being probably a clerical or typographical error; the code commissioner saying, "§ 402 ¼ for purposes of convenience is renumbered 402a."

#### Diseased animal to be killed.

§ 402b. Every animal having glanders or farcy shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor.

Legislation § 402b. 1. Added by Code Amdts. 1880, p. 41, as § 401. 2. Amended by Stats. 1891, p. 27, changing the section number from 401 to 402 ¼. 3. Amendment by Stats. 1901, p. 461, changing the section number from 402 ¼ to 402b; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 771, changing the section number from 402 ¼ to 402b.

#### Unsafe scaffolding, ladders, etc.

§ 402c. Any person or corporation employing or directing another to do or perform any labor in the construction, alteration, repairing, painting or cleaning of any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe or improper scaffolding, slings, hangers, blocks, pulleys, stays, braces,

ladders, irons, ropes or other mechanical contrivances, or who hinders or obstructs any officer attempting to inspect the same under the provisions of section "twelve" of "An Act to establish and support a bureau of labor statistics approved March 3, 1883, approved February 20, 1901" or who destroys, defaces, or removes any notice posted thereon by such officer, or permits the use thereof, after the same has been declared unsafe by such officer, contrary to the provisions of said section "twelve" of said act, shall be guilty of a misdemeanor.

**Legislation § 402c.** 1. Added by Stats. 1903, p. 216, as § 402%, and then had, between the words "the provisions of" and "or who destroys," these words, "section twelve of 'An Act to establish and support a bureau of labor statistics.'" 2. Amended by Stats. 1905, p. 771, (1) changing the section number from 402% to 402c, and (2) differing from the section as added in 1903 and the amendment of 1909, in having between the words "the provisions of" and "or who destroys," these words, "'An Act to amend an act entitled 'An Act to establish and support a bureau of labor statistics, approved March 3, 1883,' approved February 20, 1901.'" 3. Amended by Stats. 1909, p. 337.

**Animals affected with contagious diseases to be kept within inclosure.**

§ 402d. Any person owning or having possession or control of any animal affected by any contagious or infectious disease, who fails to keep the same within an inclosure, or herd the same in some place where it is secure from contact with other animals of like kind not so affected, or who suffers such infected animal to be driven on the public highway or to range where it is likely to come in contact with other animals not so affected, is guilty of a misdemeanor, and punishable by a fine of not more than five hundred dollars for each offense.

**Legislation § 402d.** 1. Addition by Stats. 1901, p. 461, as § 402c; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 771, as § 402d; the code commissioner saying, "This is a codification of the statutes of 1893, p. 302."

**Infectious diseases must be reported.**

§ 402e. Any practitioner of veterinary medicine in the state of California who shall, upon gaining information thereof, fail to immediately report in writing to the state veterinarian the location, description, and name and address of the owner or person in charge, if known, of any animal or animals affected with any one of the following diseases: glanders, anthrax, blackleg, hog-cholera, swine-

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plague, verminous bronchitis, sheep-scab, mycotic lymphangitis, aphthous fever, or Texas fever, shall be deemed guilty of a misdemeanor.

**Legislation § 402e.** Added by Stats. 1909, p. 451; approved March 19, 1909. Another section numbered 402e was added at the same session of the legislature in 1909; q.v., infra.

**Laundry from hospitals.**

§402e. Every person who conducts, within the limits of any city and county or city or town or village, a public laundry who shall receive any linen or clothing or bedding or other articles for the purpose of cleaning the same, from any hospital or pest-house or sanitarium where contagious or infectious diseases are treated, or from any undertaking establishment or public morgue, or pest-house is guilty of a misdemeanor.

**Legislation § 402e.** Added by Stats. 1909, p. 1068; approved April 22, 1909. Another section numbered § 402e was added at the same session of the legislature in 1909; q.v., supra.

## TITLE XI.

## Crimes against the Public Peace.

- § 403. Disturbance of public meetings, other than religious or political.
- § 404. "Riot" defined.
- § 405. Riot, punishment of.
- § 406. "Rout" defined.
- § 407. "Unlawful assembly" defined.
- § 408. Punishment of rout and unlawful assembly.
- § 409. Remaining present at place of riot, etc., after warning to disperse.
- § 410. Magistrates neglecting or refusing to disperse rioters.
- § 411. Consequence of resisting process after a county has been declared in a state of insurrection.
- § 412. Prize-fights prohibited.
- § 413. Persons present at prize-fights.
- § 413½. Sparring exhibitions on Memorial Day forbidden.
- § 414. Leaving the state to engage in prize-fights.
- § 415. Disturbing the peace.
- § 416. Refusing to disperse upon lawful command.
- § 417. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.
- § 418. Forcible entry and detainer.
- § 419. Returning to take possession of lands after being removed by legal proceedings.
- § 420. Preventing person from entering upon public lands.
- § 421. National guard, discrimination against members of.

## Disturbance of public meetings, other than religious or political.

§ 403. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in sections fifty-nine and three hundred and two, is guilty of a misdemeanor.

Legislation § 403. Enacted February 14, 1872; based on Field Draft, § 478, N. Y. Pen. Code, §§ 274, 275. The code commissioners say: "The assembly specified in § 59 [the original code section of this number] is a meeting of electors held for the discussion of public questions, and in § 302, a religious meeting."

"Sections fifty-nine and three hundred and two." The former section, as originally enacted, referred to meetings of electors, and the latter to religious meetings.

## "Riot" defined.

§ 404. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by imme-

diate power of execution, by two or more persons acting together, and without authority of law, is a riot.

**Legislation § 404.** Enacted February 14, 1872; based on Field Draft, § 474, N. Y. Pen. Code, § 449; Crimes and Punishment Act, § 116, as amended by Stats. 1855, p. 105, § 3.

**Citations.** Cal. 67/418.

**Unlawful assembly:** See post, § 407.

#### **Riot, punishment of.**

§ 405. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

**Legislation § 405.** Enacted February 14, 1872. (N. Y. Pen. Code, § 450.) The code commissioners say: "The punishment affixed to riot (Stats. 1855, p. 105, § 3), was the same as that affixed to rout, though the former offense included and was an aggravation of the latter. The commissioners have increased the maximum of the term from six months to two years, and the maximum of the fine from five hundred dollars to two thousand dollars, and have affixed to the crime of rout the same punishment as prescribed by existing laws."

#### **"Rout" defined.**

§ 406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

**Legislation § 406.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 116, as amended by Stats. 1855, p. 106, § 3. The code commissioners say: "This corresponds with the common-law definition, but the riot which would ensue if the intended enterprise were carried into execution, is the riot defined in § 404, ante, and not the common-law riot," and cite Russell on Crimes, p. 253, and 4 Bl. Com., p. 140. See ante, Legislation § 405, code commissioners' note.

#### **"Unlawful assembly" defined.**

§ 407. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

**Legislation § 407.** Enacted February 14, 1872 (Field Draft, § 477, N. Y. Pen. Code, §§ 451, 456); based on Crimes and Punishment Act, § 115, as amended by Stats. 1855, p. 106, § 3.

**Punishment of rout and unlawful assembly.**

§ 408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Legislation § 408. Enacted February 14, 1872; identical with Field Draft, § 479; based on Crimes and Punishment Act, §§ 115, 116, as amended by Stats. 1855, p. 106, § 3. See ante, Legislation §§ 405-407.

**Remaining present at place of riot, etc., after warning to disperse.**

§ 409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Legislation § 409. Enacted February 14, 1872; identical with Field Draft, § 481, N. Y. Pen. Code, §§ 454, 455.

**Magistrates neglecting or refusing to disperse rioters.**

§ 410. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Legislation § 410. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 216, § 43.

**Consequence of resisting process after a county has been declared in a state of insurrection.**

§ 411. A person who, after the publication of the proclamation authorized by section seven hundred and thirty-two, resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the state prison not less than two years.

Legislation § 411. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 217, § 50.

Resisting public officer: See ante, § 148.

**Prize-fights prohibited.**

§ 412. Any person, who, within this state, engages in, instigates, aids, encourages, or does any act to further a contention or fight,



without weapons, between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or who engages in a public or private sparring exhibition, with or without gloves, within the state, or who sends or publishes a challenge or acceptance or [of] a challenge for such a contention, exhibition, or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition or fight, shall be guilty of a felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than one year nor more than three years; provided, however, that sparring exhibitions, not to exceed a limited number of rounds with gloves of not less than five ounces each in weight may be held by a domestic incorporated club upon the prepayment by such club of an annual license to be fixed by the board of supervisors of cities and counties, or the city council or other governing bodies of incorporated cities. Said exhibitions must comply with the rules and regulations as the said supervisors, city councils or other governing bodies of cities and towns shall prescribe by ordinance; provided, further, that the boxers prior to each exhibition must be examined by a physician who shall determine whether or not they are in perfect physical condition.

Legislation § 412. 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 458); based on Crimes and Punishment Act, Stats. 1850, p. 233, § 44, which read: "§ 44. If any persons shall, without deadly weapons, upon previous concert and agreement, upon any wager, or for money or any other reward, fight one with another, upon conviction thereof, they or either or any of them, and all persons present aiding and abetting, shall be punished by imprisonment in the state prison for a term not exceeding two years. Should death ensue to any person in such fight, the person or persons causing such death shall be punished by imprisonment in the state prison for a term not more than ten nor less than three years." When enacted in 1872, § 412 read: "412. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the state prison not exceeding two years." 2. Amended by Stats. 1899, p. 153, and differed from the amendment of 1903 (the present section), having (1) no section number (probably a typographical error); (2) "A" instead "Any" as the initial word of the section; (3) "acceptance of a challenge" instead of "acceptance or a challenge" (undoubtedly a typographical error); (4) the proviso then reading, "provided, however, that sparring exhibitions not to exceed a limited number of rounds with gloves of not less than five ounces each in weight may be

held by a domestic incorporated athletic club upon the prepayment by such club of an annual license to be fixed by the supervisors of each county; provided further, that such club shall have a physician in attendance to examine the boxers prior to each exhibition and determine whether or not they are in perfect physical condition." 8. Amended by Stats. 1908, p. 409.

Citations. App. 8/753.

Act to prohibit prize-fighting (Stats. 1898, p. 101) was superseded by this section.

#### Persons present at prize-fights.

§ 413. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

Legislation § 413. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 238, § 44. See ante, Legislation § 412.

#### Sparring exhibitions on Memorial Day forbidden.

§ 413½. Any incorporated club holding or conducting a sparring exhibition as described in section four hundred and twelve of this code on Memorial Day—May 30,—shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Legislation § 413½. Added by Stats. 1909, p. 987.

#### Leaving the state to engage in prize-fights.

§ 414. Every person who leaves this state with intent to evade any of the provisions of the last two [three] sections, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

Legislation § 414. Enacted February 14, 1872; almost identical with Field Draft, § 488, N. Y. Pen. Code, § 461.

#### Disturbing the peace.

§ 415. Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, tradu-

cing, quarreling, challenging to fight, or fighting, or who, on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse-race, either for a wager or for amusement, or fire any gun or pistol in such unincorporated town, or use any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor, and upon conviction by any court of competent jurisdiction shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the court.

**Legislation § 415.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 243, § 112, which read: "§ 112. If any person, at late and unusual hours of the night-time, shall maliciously and willfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not more than two months." When enacted in 1872, § 415 read: "Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family, or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight, or fighting, is punishable by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding two months." 2. Amended by Code Amdts. 1877-78, p. 117.

**Citations.** Cal. 62/509, 510. App. 1/295; 8/758.

"Maliciously" and "willfully": See ante, § 7, subds. 1, 4.

Jurisdiction of police court: See Pol. Code, § 4426.

### **Refusing to disperse upon lawful command.**

§ 416. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

**Legislation § 416.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 243, § 113, which read: "§ 113. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not more than six months."

**Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.**

§ 417. Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Legislation § 417. Enacted February 14, 1872; based on Stats. 1855, p. 268, § 1.

**Forcible entry and detainer.**

§ 418. Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Legislation § 418. Enacted February 14, 1872; based on Field Draft, § 492, N. Y. Pen. Code, § 465.

Citations. Cal. 60/574.

Forcible entry and detainer: See Code Civ. Proc., §§ 1159 et seq.

**Returning to take possession of lands after being removed by legal proceedings.**

§ 419. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

Legislation § 419. Enacted February 14, 1872. (Field Draft, § 493, N. Y. Pen. Code, § 466.) The code commissioners say: "This section is founded upon and to carry out the spirit of an act for the punishment of contempts and trespasses. (Stats. 1862, p. 115.)"

**Preventing person from entering upon public lands.**

§ 420. Every person who unlawfully prevents, hinders, or obstructs any person from peaceably entering upon or establishing a settlement or residence on any tract of public land of the United States within the state of California, subject to settlement or entry under any of the public land laws of the United States; or who unlawfully hinders, prevents, or obstructs free passage over or through the public lands of the United States within the state of California, for the purpose

of entry, settlement, or residence, as aforesaid, is guilty of a misdemeanor.

**Legislation § 420.** 1. Addition by Stats. 1901, p. 462; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 675; the code commissioner saying: "This is a codification of the statute of 1887, p. 147." Another section numbered 420 was added by Code Amdts. 1877-78, p. 117, and related to inciting riots; this section was repealed by Code Amdts. 1880, p. 1.

**National guard, discrimination against members of.**

§ 421. No association or corporation shall by any constitution, rule, by-law, resolution, vote or regulation, discriminate against any member of the national guard of California because of his membership therein. Any person who willfully aids in enforcing any such constitution, rule, by-law, resolution, vote or regulation against any member of said national guard of California, is guilty of a misdemeanor.

**Legislation § 421.** Added by Stats. 1905, p. 190.

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## TITLE XII.

**Crimes against the Revenue and Property of this State.**

- § 424. Embezzlement and falsification of accounts by public officers.
- § 425. Officers neglecting to pay over public moneys.
- § 426. "Public moneys," as used in the two preceding sections defined.
- § 427. Failure to pay over fines and forfeitures received, a misdemeanor.
- § 428. Obstructing officer in collecting revenue.
- § 429. Refusing to give assessor list of property, or giving false name.
- § 430. Making false statements, not under oath, in reference to taxes.
- § 431. Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.
- § 432. Having blank receipts for licenses, etc., other than those prescribed by law.
- § 433. Selling undated foreign miners' licenses. [Repealed.]
- § 434. Refusing to give name of persons in employment, etc.
- § 435. Carrying on business without license.
- § 436. Unlawfully acting as auctioneer.
- § 437. Forging state revenue stamps. [Repealed.]
- § 438. Making instruments on unstamped paper. [Repealed.]
- § 439. Effecting insurance on account of foreign companies that have not complied with the laws of this state.
- § 440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.
- § 441. Board of examiners, controller, and treasurer neglecting certain duties.
- § 442. Military property, unlawful conversion of.
- § 442½. Wearing uniform of United States army except by certain persons, forbidden. Theatrical people. Civic societies.
- § 443. Selling state arms, etc. [Repealed.]

**Embezzlement and falsification of accounts by public officers.**

§ 424. Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safe-keeping, transfer, or disbursement of public moneys, who either:—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,
4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

5. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

6. Willfully omits to transfer the same, when such transfer is required by law; or,

7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;—

Is punishable by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any office in this state.

**Legislation § 424.** 1. Enacted February 14, 1872. The code commissioners say: "This section was amended so as to read as published in the text, by act of April 1, 1872, cited in note to § 391, ante. It is founded upon the following laws: §§ 66 and 67 of the Crimes and Punishment Act, Stats. 1850, p. 229; an act to punish embezzlement of the public money, Stats. 1851, p. 425; an act for the protection of the treasury, Stats. 1868, p. 97. . . ." When enacted in 1872, (1) the introductory paragraph had the word "Every" instead of "Each" as the initial word of the paragraph, the change being made in 1880; (2) subd. 2 reading, "2. Loans the same or any portion thereof; or"; (3) subds. 3, 4, and 5 (omitted in 1905) read, "3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or, 4. Unlawfully deposits the same or any portion thereof in any bank, or with any banker or other person; or, 5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or"; (4) the present subds. 3, 4, 5, 6, and 7 then being numbered 6, 7, 8, 9, and 10, respectively (the change being made in 1905). 2. Amended by Code Amdts. 1880, p. 39, (1) in introductory paragraph, changing "Every" to "Each" as the initial word; (2) subd. 2 reading, "2. Loans the same, or any portion thereof, or having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or"; the section otherwise reading as in the original code. 3. Amended by Stats. 1905, p. 53.

**Citations.** Cal. 54/68; 70/524; 87/608, 609; 91/511; 100/28; 103/489; 113/211; 117/244; 124/454, 455, 456; 136/445; (subd. 2) 117/248; (subd. 3) 117/248; (subd. 4) 117/248; (subd. 10) 70/526; 120/5.

#### **Officers neglecting to pay over public moneys.**

§ 425. Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

**Legislation § 425.** Enacted February 14, 1872.

Citations. Cal. 52/200; 91/511.

Fines to be paid over: Post, §§ 1457, 1570.

**“Public moneys,” as used in the two preceding sections, defined.**

§ 426. The phrase “public moneys,” as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, or town officers in their official capacity.

Legislation § 426. Enacted February 14, 1872.

Citations. Cal. 87/608; 117/244.

**Failure to pay over fines and forfeitures received, a misdemeanor.**

§ 427. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Legislation § 427. Enacted February 14, 1872; based on Crim. Proc. Act, Stats. 1851, p. 288, § 680.

Citations. Cal. 65/478.

Fines to be paid over: See post, §§ 1457, 1570.

**Obstructing officer in collecting revenue.**

§ 428. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Legislation § 428. Enacted February 14, 1872; based on Field Draft, § 501, N. Y. Pen. Code, § 475.

Citations. Cal. 91/510, 511.

**Refusing to give assessor list of property, or giving false name.**

§ 429. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

Legislation § 429. Enacted February 14, 1872; based on Stats. 1861, p. 424, §§ 17, 18.

Statement of property owned: See Pol. Code, §§ 3629, 3631.



**Making false statements, not under oath, in reference to taxes.**

§ 430. Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

**Legislation § 430.** Enacted February 14, 1872 (Field Draft, § 520, N. Y. Pen. Code, § 485); based on Stats. 1861, pp. 424, 440, §§ 17, 18, 68. The code commissioners say: "Stats. Geo. III, c. cv, § 9. False statements made under the sanction of an oath, in any of the cases referred to in the section above, fall within the definition of perjury, as given in this code, and are therefore excluded from the operation of this section. . . ."

**Statement of value:** See Pol. Code, §§ 8629-8631.

**Reduction of valuation:** See Pol. Code, §§ 8674, 8675.

**Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.**

§ 431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll-tax, road-tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

**Legislation § 431.** Enacted February 14, 1872; based on Stats. 1861, p. 449, § 95. The code commissioners say: "This and the nine following sections are extended to cover the several provisions of the revenue law relating to tax receipts, licenses, etc. (See Political Code.)"

**Licenses:** See Pol. Code, §§ 8856-8885.

**Having blank receipts for licenses, etc., other than those prescribed by law.**

§ 432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll-tax receipts other than those furnished by the controller of state or county auditor, is guilty of felony.

**Legislation § 432.** Enacted February 14, 1872; based on Stats. 1861, p. 419; Stats. 1855, p. 175, § 5.

**Poll-taxes:** See Pol. Code, §§ 8830-8862.

**§ 433. [Selling undated foreign miners' licenses. Repealed.]**

**Legislation § 433.** 1. Enacted February 14, 1872. 2. Repealed by an act entitled "An Act to amend and in relation to the Political, Civil, and Penal

Codes, and the Code of Civil Procedure," approved April 1, 1872, now on file in the office of the secretary of state. The code commissioners say: "This section was repealed in consequence of amendments to the Federal constitution superseding or overriding the foreign miners' tax of this state."

**Refusing to give name of persons in employment, etc.**

§ 434. Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

Legislation § 434. Enacted February 14, 1872; based on Stats. 1864, p. 45, § 1.

Debtors paying poll-taxes: See Pol. Code, §§ 3848-3850.

**Carrying on business without license.**

§ 435. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

Legislation § 435. Enacted February 14, 1872; based on Stats. 1861, p. 419, § 77; Stats. 1863, p. 732, § 1.

Citations. Cal. 69/608, 611; 71/468; 85/210; 106/404, 405, 406, 408; 114/282; 149/768; 152/703, 704. App. 5/578, 579, 580, 531.

License law: See Pol. Code, §§ 3356-3386.

**Unlawfully acting as auctioneer.**

§ 436. Every person who acts as an auctioneer in violation of the laws of this state relating to auctions and auctioneers, is guilty of a misdemeanor.

Legislation § 436. Enacted February 14, 1872; based on Stats. 1859, p. 354, § 8.

Auctioneers: See Pol. Code, §§ 3284-3292, 3376.

**§ 437. [Forging state revenue stamps. Repealed.]**

Legislation § 437. 1. Enacted February 14, 1872; based on Stats. 1861, p. 315, §§ 9, 10. 2. Repealed by act of April 1, 1872, "cited in note in lieu of § 433, ante." See post, Legislation § 438, for code commissioners' note.

**§ 438. [Making instruments on unstamped paper. Repealed.]**

Legislation § 438. 1. Enacted February 14, 1872. 2. Repealed by act of April 1, 1873, "cited in note in lieu of § 433, ante." The code commis-

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sioners say: "The two preceding repealed sections became inoperative and unnecessary by the stamp tax being declared unconstitutional in *Brumagim v. Tillinghast*, 18 Cal. 265."

**Effecting insurance on account of foreign companies that have not complied with the laws of this state.**

§ 439. Every person who in this state procures, or agrees to procure, any insurance for a resident of this state, from any insurance company not incorporated under the laws of this state, unless such company or its agent has filed the bond required by the laws of this state relating to insurance, is guilty of a misdemeanor.

**Legislation § 439.** Enacted February 14, 1872. The code commissioners say: "The reference is to the chapter relative to foreign insurance companies, and to the section that forbids them to carry on business in this state except upon certain conditions. (Stats. 1862, p. 243, and acts amendatory.)"

**Bonds from foreign corporations:** Pol. Code, § 623.

**Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.**

§ 440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this state, who, upon demand, fails or refuses to permit the controller or attorney-general to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

**Legislation § 440.** Enacted February 14, 1872; based on Stats. 1852, p. 57, § 2.

**Board of examiners, controller, and treasurer neglecting certain duties.**

§ 441. Every member of the board of examiners and every controller or state treasurer who violates any of the provisions of the laws of this state relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

**Legislation § 441.** Enacted February 14, 1872; based on Stats. 1858, p. 212. The code commissioners say: "The chapter referred to is the one relating to board of examiners and their duties."

**Board of examiners:** Pol. Code, §§ 654 et seq.

**Military property, unlawful conversion of.**

§ 442. *Unlawful conversion of military property.* Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any

manner pawn or pledge any arms, uniforms, equipments, or other military property of the state of California, or of any company of the national guard shall be guilty of a misdemeanor.

Legislation § 442. 1. Enacted February 14, 1872; based on Stats. 1866, p. 735, § 50. The code commissioners say: "It is intended to change the name 'national guard' to 'state guard.'" When enacted in 1872, § 442 read: "442. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the state, or the property of any company of the state militia, is guilty of a misdemeanor." 2. Amended by Stats. 1905, p. 144.

**Wearing uniform of United States army except by certain persons, forbidden. Theatrical people. Civic societies.**

§ 442½. Every person, other than an officer or enlisted man of the national guard or naval militia of the state of California, or of any other state, or of the United States army, navy, marine corps or revenue service or forest service, or inmate of any veterans' or soldiers' home, who at any time wears the uniform of the United States army or navy or national guard, or any part of such uniform, or a uniform or part of a uniform similar thereto, within the bounds of the state of California, is guilty of a misdemeanor, and if found guilty of such offense shall be punishable by a fine of not less than one hundred nor more than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment; provided, that nothing in this act shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession; and provided, that nothing in this act shall be construed as prohibiting the uniform rank of civic societies parading or traveling in a body or assembling in a lodge-room; and provided further, that whenever the national guard, or any part thereof is in active service, or is called into active service, no civic organization or member thereof shall parade or appear in uniform in the locality where said national guard is in service.

Legislation § 442½. Added by Stats. 1907, p. 759.

§ 443. [Selling state arms, etc. Repealed.]

Legislation § 443. 1. Enacted February 14, 1872. 2. Repealed by Stats. 1885, p. 145.

## TITLE XIII.

## Crimes against Property.

- Chapter I. Arson. §§ 447-455.
- II. Burglary and Housebreaking. §§ 459-463.
- III. Having Possession of Burglarious Instruments and Deadly Weapons. §§ 466, 467.
- IV. Forgery and Counterfeiting. §§ 470-482.
- V. Larceny. §§ 484-502½.
- VI. Embezzlement. §§ 503-514.
- VII. Extortion. §§ 518-526.
- VIII. False Personation and Cheats. §§ 528-538b.
- IX. Fraudulently Fitting Out and Destroying Vessels. §§ 539-543½.
- X. Fraudulently Keeping Possession of Wrecked Property. §§ 544, 545.
- XI. Fraudulent Destruction of Property Insured. §§ 548, 549.
- XII. False Weights and Measures. §§ 552-555.
- XIII. Fraudulent Insolvencies by Corporations, and Other Frauds in their Management. §§ 557-572.
- XIV. Fraudulent Issue of Documents of Title to Merchandise. §§ 577-583.
- XV. Malicious Injuries to Railroad Bridges, Highways, Bridges, and Telegraphs. §§ 587-593a.

## CHAPTER I.

## Arson.

- § 447. Arson defined.
- § 448. "Building" defined.
- § 449. "Inhabited building" defined.
- § 450. "Night-time" defined.
- § 451. "Burning" defined.
- § 452. Ownership of the building.
- § 453. Degrees of arson.
- § 454. Arson of the first degree. Arson of the second degree.
- § 455. Punishment of arson.

**Arson defined.**

§ 447. Arson is the willful and malicious burning of a building, with intent to destroy it.

**Legislation § 447.** Enacted February 14, 1872; based on Field Draft, § 521, N. Y. Pen. Code, §§ 486, 487, 488; 4 Bl. Com. 220. The code commissioners say: "The statutes of this state have enlarged the use of the term to include may acts of burping not involving special danger to the person. Thus, burning stacks of grain, standing crops, bridges, etc., is arson in the second degree. (Stats. 1856, p. 181, §§ 4, 5.) The commissioners recommend that the term 'arson' be confined to the offense of setting on fire buildings (including ships and vessels). Other criminal acts of burning are not properly classified under the title of 'arson,' but under the title of 'malicious mischief.'" The New York code commissioners, in a table of the principal crimes enumerated in the Field Draft, under the title "Arson," say: "Originally, arson was the burning of a human habitation. The term has been, in this state, and in other jurisdictions, extended by statute, to embrace the burning of other descriptions of property not involving danger to human life. In the code, the term is used in its original and restricted sense. See §§ 521-539. Other criminal burnings are punishable as malicious mischief; under § 703."

**Citations.** Cal. 51/320; 71/49; 81/617, 618; 103/445; 113/406; 127/340. Burning insured property: Post, § 548.

**"Building" defined.**

§ 448. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of this chapter.

**Legislation § 448.** Enacted February 14, 1872; almost identical with Field Draft, § 522, N. Y. Pen. Code, § 493.

**Citations.** Cal. 51/320; 71/49; 81/617; 103/445.

**"Inhabited building" defined.**

§ 449. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this chapter.

**Legislation § 449.** Enacted February 14, 1872; based on Field Draft, § 523, N. Y. Pen. Code, § 494; Stats. 1856, p. 181, § 6.

**Citations.** Cal. 71/49; 81/617.

**"Night-time" defined.**

§ 450. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

Legislation § 450. 1. Enacted February 14, 1872. 2. Repeal by Stats. 1901, p. 462; unconstitutional: See note, § 5, ante.

"Night-time," defined: See post, § 468.

**"Burning" defined.**

§ 451. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

Legislation § 451. Enacted February 14, 1872; based on Field Draft, § 525. The code commissioners cite *State v. Sandy*, 5 Ired. 570; 16 Mass. 105; 16 Johns. 208; 17 Ga. 180.

Citations. Cal. 103/445.

**Ownership of the building.**

§ 452. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying such building, or any part thereof.

Legislation § 452. Enacted February 14, 1872; based on Field Draft, § 526, N. Y. Pen. Code, § 495.

Citations. Cal. 71/49; 81/617; 118/406; 120/686; 185/166.

**Degrees of arson.**

§ 453. Arson is divided into two degrees.

Legislation § 453. Enacted February 14, 1872; based on Stats. 1856, p. 182, §§ 4, 5.

Citations. Cal. 58/627.

**Arson of the first degree. Arson of the second degree.**

§ 454. Maliciously burning in the night-time an inhabited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree.

Legislation § 454. Enacted February 14, 1872; the first sentence identical with Field Draft, § 532, N. Y. Pen. Code, §§ 486, 487.

Citations. Cal. 51/320; 53/627.

Setting fire to woods, prairies, grasses, or grain: See ante, § 384.

**Punishment of arson.**

§ 455. Arson is punishable by imprisonment in the state prison, as follows:

1. Arson in the first degree, for not less than two years;
2. Arson in the second degree, for not less than one nor more than twenty-five years.

Legislation § 456. 1. Enacted February 14, 1872. (Field Draft, § 589, N. Y. Pen. Code, § 489.) 2. Amended by Stats. 1901. p. 664, in subd. 2, substituting "twenty-five" for "ten."

## CHAPTER II.

### Burglary and Housebreaking.

- § 459. "Burglary" defined.
- § 460. "Burglary" defined.
- § 461. Burglary. Penalty for.
- § 462. Punishment of housebreaking. [Repealed.]
- § 463. "Night-time" defined.

#### "Burglary" defined.

§ 459. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary.

Legislation § 459. 1. Enacted February 14, 1873; based on Crimes and Punishment, § 58, as amended by Stats. 1858, p. 206, § 1, which read: "§ 1. Every person who shall, in the night-time, forcibly break and enter, or without force enter (the doors or windows being open) any house, room, apartment or tenement, or any tent, vessel, or water-craft, with intent to commit grand or petit larceny, or any felony, shall be deemed to be guilty of burglary, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than ten years." When enacted in 1872, § 459 read: "459. Every person who, in the night-time, forcibly breaks and enters, or without force enters through any open door, window, or other aperture, any house, room, apartment, or tenement, or any tent, vessel, water-craft, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary." 2. Amended by Code Amdts. 1875-76, p. 111. Cf. the original code § 461, quoted post, Legislation § 461.

Citations. Cal. 52/454; 55/525; 56/407; 58/106; 59/883; 61/866; 65/226; 67/104; 86/240; 98/113; 94/482, 597; 121/347; 130/602; 138/146, 484; 143/129.

#### "Burglary" defined.

§ 460. Every burglary committed in the night-time is burglary of the first degree, and every burglary committed in the daytime is burglary of the second degree.



Legislation § 460. 1. Enacted February 14, 1872, and then provided for the punishment of burglary (the present § 461). See post, § 461. 2. Amended by Code Amdts. 1875-76, p. 112, this so-called amendment being in fact the addition of a new section.

Citations. Cal. 52/454; 59/388; 73/581; 106/642; 144/754.

### Burglary. Penalty for.

§ 461. Burglary of the first degree is punishable by imprisonment in the state prison for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the state prison for not more than five years.

Legislation § 461. 1. Enacted February 14, 1872, as § 460, and then read: "460. Burglary is punishable by imprisonment in the state prison for not less than one nor more than fifteen years." The code commissioners say: "By the act of 1858 (Stats. 1858, p. 206) the crime of burglary was punishable by imprisonment in the state prison for a term not less than one nor more than ten years, whilst grand larceny, a less heinous crime, might be punished with imprisonment in the state prison for fourteen years. (Stats. 1856, p. 219, § 7.) The commissioners have reduced the maximum punishment for larceny from fourteen years to ten years, and increased that of burglary from ten years to fifteen years." 2. Amended by Code Amdts. 1875-76, p. 112, changing the section number to 461 and amending the section. The original code § 461 defined "housebreaking," and read: "461. Every person who, in the daytime, enters any dwelling-house, shop, warehouse, store, mill, barn, stable, outhouse, other building, vessel, or railroad car, with intent to steal or to commit any felony whatever therein, is guilty of house-breaking." Cf. the present § 459.

Citations. Cal. 52/454, 88/120, 178; 143/599. App. 4/384.

### § 462. [Punishment of housebreaking. Repealed.]

Legislation § 462. 1. Enacted February 14, 1872. 2. Repealed by Code Amdts. 1875-76, p. 112.

Citations. Cal. 48/549.

### "Night-time" defined.

§ 463. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

Legislation § 463. 1. Enacted February 14, 1872; based on Field Draft, § 524. 2. Repeal by Stats. 1901, p. 462; unconstitutional: See note, § 5, ante.

Citations. Cal. 144/754.

"Night-time," defined: See ante, § 450.

## CHAPTER III.

**Having Possession of Burglarious Instruments and Deadly Weapons.**

§ 466. Having possession of any instrument with intent to commit burglary.

§ 467. Having possession of deadly weapons with intent to commit an assault.

**Having possession of any instrument with intent to commit burglary.**

§ 466. Every person having upon him or in his possession a picklock, crow, keybit, or other instrument or tool with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this code shall be deemed to be a building within the meaning of this section.

Legislation § 466. 1. Enacted February 14, 1872 (N. Y. Pen. Code. § 508); based on Crimes and Punishment Act, Stats. 1850, p. 245, § 127, which read: "§ 127. If any person shall be found having upon him or her any picklock, crow, key, bitt, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the county jail not more than two years; and if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months." When enacted in 1872, § 466 read: "Every person having upon him a picklock, crow key, bit, other instrument or tool, with intent feloniously to break or enter into any building, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1873-74, p. 463. Cf. "crow, key, bitt," of the Crimes and Punishment Act; "crow key, bit," of the original code section; "crow, keybit," of the amendment of 1873-74 (the present section).

**Having possession of deadly weapons with intent to commit an assault.**

§ 467. Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

Legislation § 467. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 245, § 127. See ante, Legislation § 466.

## CHAPTER IV.

## Forgery and Counterfeiting.

- § 470. Forgery of wills, conveyances, etc.
- § 471. Making false entries in records or returns.
- § 472. Forgery of public and corporate seals.
- § 473. Punishment of forgery.
- § 474. Forging telegraph or telephone messages.
- § 475. Passing or receiving forged notes.
- § 476. Making, passing, or uttering fictitious bills, etc.
- § 476a. Drawing of bank checks with intent to defraud.
- § 477. Counterfeiting coin, bullion, etc.
- § 478. Punishment of counterfeiting.
- § 479. Possessing or receiving counterfeit coin, bullion, etc.
- § 480. Making or possessing counterfeit dies or plates.
- § 481. Counterfeiting railroad or steamship tickets.
- § 482. Restoring canceled railroad or steamship tickets.

## Forgery of wills, conveyances, etc.

§ 470. Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority so to do, to, or falsely makes, alters, forges, or counterfeits, any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond, covenant, bank bill or note, postnote, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory,

promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

Legislation § 470. 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 287, § 73, which read: " § 73. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, power of attorney, any comptroller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage and defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this state or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this state or not: every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years." When enacted in 1872, § 470 differed from the amendment of 1905 (the present section), (1) the first part of the section then reading, "Every person who,

with intent to defraud another, falsely makes"; (2) having (a) "letters, patent," instead of "letters-patent" (quere as to the hyphen); (b) "annuity" after "codicil"; (c) "post note" instead of "postnote" (as to which, quere); (d) "discharge for any debt" instead of "discharge of any debt"; (e) "certificate of shares" instead of "certificate of shares"; (f) "or assignment of any bond, writing obligatory, or promissory note for money or other property" instead of "or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property." 2. Amendment by Stats. 1901, p. 462; unconstitutional: See note, § 5, ante. 8. Amended by Stats. 1905, p. 673; the code commissioner saying, "The purpose of the amendment is to make the forging of the name of a fictitious person, or knowingly signing the name of another, criminal if done with intent to defraud."

Citations. Cal. 65/279; 66/262; 70/63; 77/465; 84/569; 90/587, 589; 91/478; 92/592; 96/174; 100/665; 103/564, 565; 105/38; 108/442; 111/280; 113/280; 114/858; 117/30; 118/292; 119/167; 122/495; 123/410; 127/100; 130/452; 133/125, 126, 127; 135/301; 137/451, 452, 453, 454; 139/68; 143/119. App. 4/41, 147; 5/35; 6/269; 7/130; 8/386.

Forgery of records: See post, § 471.

#### **Making false entries in records or returns.**

§ 471. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Legislation § 471. Enacted February 14, 1872 (Field Draft, § 557); based on Crimes and Punishment Act, Stats. 1850, p. 237, § 73.

Citations. Cal. 96/174; 133/125.

Forgery of records: See ante, § 470.

#### **Forgery of public and corporate seals.**

§ 472. Every person who, with intent to defraud another, forges, or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or of any other state, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

Legislation § 472. Enacted February 14, 1872 (Field Draft, § 555. N. Y. Pen. Code, § 511); based on Crimes and Punishment Act, Stats. 1850, p. Pen. Code—15

§ 88, § 81. The code commissioners say: "Extended to include corporate and foreign seals."

Citations. Cal. 183/125; 187/451.

#### **Punishment of forgery.**

§ 473. Forgery is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Legislation § 473. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 237, § 73. See ante, Legislation § 470.

Citations. Cal. 138/125.

#### **Forging telegraph or telephone messages.**

§ 474. Every person who knowingly and willfully sends by telegraph or telephone to any person a false or forged message, purporting to be from a telegraph or telephone office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph or telephone, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or telephone, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Legislation § 474. 1. Enacted February 14, 1872; based on Stats. 1862, p. 288, § 2. 2. Amendment by Stats. 1901, p. 463; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 674, (1) adding "or telephone" after "telegraph" in the four instances; (2) changing "such" to "a" before "telegraph" in the second instance; (3) adding "such" before "fine and imprisonment," at end of section.

Citations. Cal. 143/119, 128.

#### **Passing or receiving forged notes.**

§ 475. Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank

or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Legislation § 475. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 288, § 76, which read: "§ 76. Every person who shall have in his possession or shall receive from any other person any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this state or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or blank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in the state or elsewhere, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one, nor more than fourteen years."

**Making, passing, or uttering fictitious bills, etc.**

§ 476. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

**Legislation § 476.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 238, § 77, which read: "§ 77. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this state or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, or copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and on conviction thereof shall be punished by imprisonment in the state prison for a term not less than one, nor more than fourteen years."

**Citations.** Cal. 90/587, 589; 105/88, 89, 40; 109/296, 297, 298; 114/351, 353; 119/169; 133/122, 123, 125, 126, 127; 135/300, 301; 137/451, 452, 454. App. 5/30, 31, 35; 6/269.

#### **Drawing of bank checks with intent to defraud.**

**§ 476a.** Every person who, willfully, with intent to defraud, makes or draws, or utters, or delivers to another person any check or draft on a bank, banker or depository for the payment of money, knowing at the time of such making, drawing, uttering or delivery, that he has not sufficient funds in or credit with such bank, banker or depository to meet such check or draft in full upon its presentation, is punishable by imprisonment in the state prison for not less than one year nor more than fourteen years. The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank or depository for the payment of such check or draft.

**Legislation § 476a.** Added by Stats. 1907, p. 683.

#### **Counterfeiting coin, bullion, etc.**

**§ 477.** Every person who counterfeits any of the species of gold or silver coin current in this state, or any kind or species of gold-dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

**Legislation § 477.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 237, § 74, which read: "§ 74. Every person who shall counterfeit any of the species of gold or silver coin now current,



or that shall hereafter be current in this state, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year, nor more than fourteen years." The code commissioners say: "This section is framed from § 74 of the Crimes and Punishment Act, and is extended to include the kindred offenses provided for in § 1 of the act in relation to counterfeiting gold-dust, etc. (Stats. 1855, p. 178), and also to include counterfeiting silver bars, etc."

#### **Punishment of counterfeiting.**

§ 478. Counterfeiting is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

Legislation § 478. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 238, §§ 76, 77; Stats. 1855, p. 178, §§ 1, 2. See ante, Legislation §§ 475, 476.

#### **Possessing or receiving counterfeit coin, bullion, etc.**

§ 479. Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold-dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Legislation § 479. Enacted February 14, 1872 (Field Draft, § 575, N. Y. Pen. Code, § 526); based on Crimes and Punishment Act, Stats. 1850, p. 238, § 75; Stats. 1855, p. 178, § 2. The Crimes and Punishment section read: "§ 75. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this state, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than one year, nor more than fourteen years."

#### **Making or possessing counterfeit dies or plates.**

§ 480. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or

in counterfeiting gold-dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

**Legislation § 480.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 233, § 78; Stats. 1855, p. 178, § 1. The Crimes and Punishment section read: "§ 78. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this state, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, shall be destroyed."

**Citations.** Cal. 80/285, 286, 287.

#### Counterfeiting railroad or steamship tickets.

§ 481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars or vessels of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad or steamship company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

**Legislation § 481.** 1. Added by Code Amdts. 1873-74, p. 433. 2. Amendment by Stats. 1901, p. 463; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 675, adding (1) "or steamship" after "railroad" in both instances, and (2) "or vessels" after "cars."

#### Restoring canceled railroad or steamship tickets.

§ 482. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company,

or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad or steamship company, or lessee thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad or vessel of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

**Legislation § 482.** 1. Added by Code Amdts. 1878-74, p. 433. 2. Amendment by Stats. 1901, p. 463; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 675, adding (1) "or steamship" after "railroad" in both instances, and (2) "or vessel" after "fare on the railroad."

**Citations.** Cal. 138/125.

## CHAPTER V.

### Larceny.

- § 484. "Larceny" defined.
- § 485. Larceny of lost property.
- § 486. Grand and petit larceny.
- § 487. Grand larceny defined.
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- § 489. Punishment of grand larceny.
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- § 495. Severing and removing part of the realty declared larceny.
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- § 498. Injuries to gas service-pipes.
- § 499. Stealing water.
- § 499a. Stealing electricity a misdemeanor.
- § 499b. Taking motor vehicle, bicycle, etc., temporarily, a misdemeanor.
- § 499c. Unlawful use of automobiles.
- § 500. Larceny of goods saved from fire in San Francisco.
- § 501. Purchasing or receiving in pledge junk, etc.
- § 502. Applies sections 339, 342, and 343 to junk dealers, etc. [Repealed.]
- § 502½. Removal of improvements from mortgaged real property is larceny.

**"Larceny" defined.**

§ 484. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

Legislation § 484. Enacted February 14, 1872 (Field Draft, § 584, N. Y. Pen. Code, § 528,; based on Crimes and Punishment Act, §§ 60, 61, as amended by Stats. 1854, p. 221; §§ 7, 8, which read: "§ 60. Every person who shall feloniously steal, take and carry away, lead, or drive away, the personal goods or property of another, of the value of fifty dollars, or more, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the state prison for any term not less than one year, nor more than fourteen years. § 61. Every person who shall feloniously steal, take and carry, lead, or drive away, the personal goods, or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by such fine and imprisonment."

Citations. Cal. 53 59; 56 30; 61 135, 528; 62 141; 80/51; 81/137; 86/239; 90, 572; 95 228; 110 601; 112 339; 118 26; 123, 524; 139/636; 143/129. App. 1, 53, 449, 453; 6 754; 7, 166, 167.

Embezzlement: Post, §§ 503 et seq.

Act to more fully define larceny: See post, Appendix, tit. "Larceny."

Act to punish stealing gold-dust, amalgam, or quicksilver: See post, Appendix, tit. "Larceny."

**Larceny of lost property.**

§ 485. One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

Legislation § 485. Enacted February 14, 1872; based on Field Draft, § 585, N. Y. Pen. Code, § 539.

Citations. Cal. 81/137; 95/230, 231. App. 1/450; 7/168.

Lost and unclaimed property: See Pol. Code, §§ 3136-3157; Civ. Code, §§ 1864-1872.

**Grand and petit larceny.**

§ 486. Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

Legislation § 486. Enacted February 14, 1872 (identical with Field Draft, § 586,; based on Crimes and Punishment Act, Stats. 1850, p. 235, §§ 60, 61. See ante, Legislation § 484.

Citations. Cal. 66/185; 67/351; 86/240; 112/339.

**Grand larceny defined.**

§ 487. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.
2. When the property is taken from the person of another.
3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack or jenny.

**Legislation § 487.** 1. Enacted February 14, 1872 (Field Draft, § 587, N. Y. Pen. Code, § 530); based on Crimes and Punishment Act, Stats. 1850, p. 235, § 60; Stats. 1856, p. 220, § 7; Stats. 1867-68, p. 461, § 1; Stats. 1869-70, p. 777, § 1. See ante, Legislation § 484. 2. Amended by Stats. 1895, p. 35, in subd. 3, omitting "goat, sheep, or hog" from end of subdivision; the section then reading as the amendment of 1907 (the present section). 3. Amended by Stats. 1901, p. 290, in subd. 3, adding "bicycle" before "horse." 4. Amendment by Stats. 1901, p. 464; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1907, p. 118, in subd. 3, omitting "bicycle" before "horse"; the section now reading as the amendment of 1895.

**Citations.** Cal. 49/68; 56/80; 59/392; 61/478; 65/17; 66/185; 67/852; 80/51; 100/439; 112/339; 114/110; 116/584; 120/667; 140/662; 144/352; (subd. 2) 139/686; (subd. 3) 62/52, 142; 90/572. App. 1/449; (subd. 2) 1/449; (subd. 3) 1/449; 4/898.

**Larceny, defined:** See ante, § 484.

**Stealing of gold-dust, amalgam, quicksilver, etc., is grand larceny:** See post, Appendix, tit. "Larceny."

**Petit larceny.**

§ 488. Larceny in other cases is petit larceny.

**Legislation § 488.** Enacted February 14, 1872; identical with Field Draft, § 588, and N. Y. Pen. Code, § 532; based on Crimes and Punishment Act, § 61, as amended by Stats. 1856, p. 220, § 8. See ante, Legislation § 484.

**Citations.** Cal. 64/404; 67/852; 86/240; 112/339; 116/584.

**Jurisdiction of police court:** See Pol. Code, § 4426.

**Punishment of grand larceny.**

§ 489. Grand larceny is punishable by imprisonment in the state prison for not less than one nor more than ten years.

**Legislation § 489.** Enacted February 14, 1872 (Field Draft, § 589, N. Y. Pen. Code, § 533); based on Crimes and Punishment Act, § 60, as amended by Stats. 1856, p. 220, § 7. See ante, Legislation §§ 484, 460.

**Citations.** Cal. 61/185; 64/252; 65/299, 300; 140/662.

**Punishment of petit larceny.**

§ 490. Petit larceny is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

Legislation § 490. Enacted February 14, 1872 (Field Draft, § 590, N. Y. Pen. Code, § 535); based on Crimes and Punishment Act, § 61, as amended by Minn. 1856, p. 220, § 8. See ante, Legislation § 484.

Citations. Cal. 64/341; 66/186; 78/444; 109/266. App. 5/104.

**Dogs are personal property.**

§ 401. Dogs are personal property, and their value is to be ascertained in the same manner as the value of other property.

Legislation § 491. 1. Enacted February 14, 1872 (based on Stats. 1860, p. 70, § 1), and then read: "Dogs are property, and of the value of one dollar each, within the meaning of the terms 'property' and 'value,' as used in this chapter." 2. Amended by Stats. 1887, p. 181.

Citations. Cal. 60/549.

Malicious injury to animal: Post, § 597.

**Larceny of written instruments.**

§ 492. If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

Legislation § 492. Enacted February 14, 1872; almost identical with Field Draft, § 593, N. Y. Pen. Code, § 545; Crimes and Punishment Act, § 62, as amended by Stats. 1856, p. 220, § 9.

Citations. Cal. 90/578.

**Value of passage tickets.**

§ 493. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper, or writing.

Legislation § 493. Enacted February 14, 1872; based on Field Draft, § 594, N. Y. Pen. Code, § 546.

**Written instruments completed but not delivered.**

§ 494. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

**Legislation § 494.** Enacted February 14, 1872; almost identical with Field Draft, § 595, N. Y. Pen. Code, § 586.

**Embezzlement of evidence of debt:** Post, § 510.

**Severing and removing part of the realty declared larceny.**

§ 495. The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

**Legislation § 495.** Enacted February 14, 1872; based on Field Draft, § 596, N. Y. Pen. Code, § 587.

Although outstanding crops are part of the realty, they are subjects of larceny: See post, Appendix, tit. "Larceny."

Act to punish stealing from mining claim, etc.: See post, Appendix, tit. "Larceny."

**Severing personalty from realty:** See post, Appendix, tit. "Larceny."

**Buying or receiving stolen goods. Presumptive evidence.**

§ 496. Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen; or any person who having bought or received stolen personal property, who after having been informed that said property then in his possession is stolen property, and after a demand, in writing, for the delivery of same has been made upon him by the owner of said stolen property, or a peace-officer, within three months after he bought or received the same, secretes said property, or gives, sells, conveys or transfers said stolen property to another person not entitled thereto, with intent to prevent the owner from again possessing his property, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months, and it shall be presumptive evidence that such property was stolen, if the same was purchased or received from a person under the age of eighteen years, unless such

property was sold by such minor at a fixed place of business carried on by such minor or his employer.

**Legislation § 496.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 236, § 63. The code commissioners say: "This is founded upon § 63 of the Crimes and Punishment Act (Stats. 1850, p. 229), which contains a provision that 'every such person may be tried, convicted and punished, as well before as after the trial of his principal.' This provision is transferred to the Criminal Procedure Act." When enacted in 1872, § 496 read: "Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months, or by both." 2. Amended by Code Amdts. 1873-74, p. 464, adding a clause at end of original code section, reading, "and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen, unless such property is sold by said minor at a fixed place of business carried on by said minor or his employer." 3. Amendment by Stats. 1901, p. 464; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 718, (1) omitting the words "or by both," the final words of the original code section; (2) in the addition of 1873-74, (a) adding the word "years" after "age of eighteen," and (b) changing "said minor" to "such minor" in both instances; the code commissioner saying, "The change consists in the omission of the words 'or both' after 'months.' Obviously it was not the intention of the legislature that the same offense should be punishable by imprisonment in both the state prison and the county jail." 5. Amended by Stats. 1907, p. 801.

**Citations.** Cal. 89/495, 499; 90/573; 94/574; 135/62, 63.

**Larceny. Receiving property stolen in another state.**

**§ 497.** Every person who, in another state or country steals or embezzles the property of another, or receives such property knowing it to have been stolen or embezzled, and brings the same into this state, may be convicted and punished in the same manner as if such larceny, or embezzlement, or receiving, had been committed in this state.

**Legislation § 497.** 1. Enacted February 14, 1872; based on Field Draft, § 600. 2. Amendment by Stats. 1901, p. 464; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 718, adding the words "or embezzles," "or embezzled," and "or embezzlement"; the code commissioner saying of the additions, "The object of the amendment is to enlarge the scope of the section to include cases of embezzlement."

**Citations.** Cal. 90/573; 91/27; 122/74.

**Bringing stolen property into state:** See ante, § 27; post, § 789.



**Injuries to gas service-pipes.**

§ 498. Every person who shall willfully, with intent to injure or defraud, make or cause to be made, or uses or causes to be used, any pipe, tube, or other instrument or conduit in connection with any main, service-pipe or other pipe or conduit owned or controlled by any other person for conducting or supplying illuminating or fuel gas, in such manner as to supply such or any illuminating or fuel gas to any burner, or outlet by or at which illuminating or fuel gas is consumed or otherwise used or wasted without passing through any meter provided for the measuring and registering the quantity of gas passing through such pipes, tubes or other conduits, or willfully acts in any other manner so as to evade, or cause the evasion of payment therefor, and every person who, with like intent, injures or alters any gas meter or register, or obstructs its action, is guilty of a misdemeanor.

**Legislation § 498.** 1. Enacted February 14, 1872 (based on Field Draft, § 599, N. Y. Pen. Code, § 651; Stats. 1859, p. 309, §§ 1, 2), and then read: "Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service-pipe, or other pipe for conducting or supplying illuminating-gas, in such manner as to supply illuminating-gas to any burner or orifice, by or at which illuminating-gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas-meter or obstructs its action, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 464; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1909, p. 829.

**Stealing water.**

§ 499. Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service-pipe, or other pipe, or conduit or flume for conducting water, for the purpose of taking water from such main, service-pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor.

**Legislation § 499.** Enacted February 14, 1872 (N. Y. Pen. Code, § 651a); based on Stats. 1861, p. 533, §§ 1, 2, 3.

**Citations.** Cal. 66/215.

**Taking water from canal, flume, etc.:** See post, § 592.

**Stealing electricity a misdemeanor.**

§ 499a. Every person who, with intent to injure or defraud, shall unlawfully connect, or procure another to connect, with any electric apparatus or any electric wire, operated by any person, persons or corporation authorized to generate, transmit, and sell electric current, without the knowledge and consent of such person, persons, or corporation operating such apparatus or wires, for the purpose of appropriating electric current for light, power, heat, or other use, and to evade payment therefor, or who shall, with like intent, injure or alter, or who shall procure to be injured or altered, any electric meter or obstruct its working, or who shall procure the same to be maliciously tampered with and injured, shall be deemed guilty of a misdemeanor.

Legislation § 499a. Added by Stats. 1901, p. 20.

**Taking motor vehicle, bicycle, etc., temporarily, a misdemeanor.**

§ 499b. Any person who shall, without the permission of the owner thereof, take any automobile, bicycle, motorcycle, or other vehicle, for the purpose of temporarily using or operating the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment.

Legislation § 499b. Added by Stats. 1905, p. 184.

**Unlawful use of automobiles.**

§ 499c. Every owner or manager of an automobile-garage, or any agent or employee of such owner or manager, or any other person, having the care, custody or possession of any automobile, who takes, hires, runs, drives or uses such automobile, or who takes or removes therefrom any part thereof, without the owner's consent, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

Legislation § 499c. Added by Stats. 1909, p. 590.

**Larceny of goods saved from fire in San Francisco.**

§ 500. Every person who, in the city and county of San Francisco, saves from fire or from a building endangered by fire, any property,

and for two days thereafter corruptly neglects to notify the owner or fire marshal thereof, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

**Legislation § 500.** 1. Enacted February 14, 1872. 2. Amendment by Stats. 1901, p. 464; unconstitutional: See note, § 5, ante.

**Property rescued from fire:** See Pol. Code, § 3843.

**Purchasing or receiving in pledge junk, etc.**

§ 501. Every person who purchases or receives in pledge or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor.

**Legislation § 501.** Added by Stats. 1871-72, p. 684.

§ 502. [Applies §§ 339, 342, and 343 to junk dealers, etc. Repealed.]

**Legislation § 502.** 1. Added by Stats. 1871-72, p. 684. 2. Repealed by Stats. 1901, p. 75, the section being added as a new section, numbered 344; q.v., ante. 3. Repeal by Stats. 1901, p. 465; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 55/806.

**Removal of improvements from mortgaged real property is larceny.**

§ 502½. Every person who, after mortgaging any real property, and during the existence of such mortgage, or after such mortgaged property shall have been sold under an order and decree of foreclosure, and with intent to defraud or injure the mortgagee, his representatives, successors, or assigns, or the purchaser of such mortgaged premises at such foreclosure sale, his representatives or assigns, takes, removes, or carries away from such mortgaged premises, or otherwise disposes of, or permits the taking, removing, or carrying away, or otherwise disposing of, any house, barn, windmill, or water-tank, upon or affixed to such premises as an improvement thereon, without the written consent of the mortgagee, his representatives, successors, or assigns, or the purchaser at such foreclosure sale, his representatives or assigns, is guilty of larceny, and shall be punished accordingly.

**Legislation § 502½.** 1. Added by Stats. 1895, p. 77. 2. Amendment by Stats. 1901, p. 465, merely changing the section number to 502; unconstitutional: See note, § 5, ante.

**Removing mortgaged personal property:** See post, § 588.

CHAPTER VI.  
Embezzlement.

- § 503. "Embezzlement" defined.  
 § 504. When officers of state or any association guilty of embezzlement.  
 § 505. When carrier or other person having property for transportation, for hire, guilty of embezzlement.  
 § 506. When contractor, etc., guilty of embezzlement.  
 § 507. When bailee, tenant, or lodger guilty of embezzlement.  
 § 508. When clerk, agent, or servant guilty of embezzlement.  
 § 509. Distinct act of taking.  
 § 510. Evidence of debt undelivered may be subject of embezzlement.  
 § 511. Claim of title a ground of defense.  
 § 512. Intent to restore property.  
 § 513. Actual restoration a ground for mitigation of punishment.  
 § 514. Punishment.

Code commissioners' note to Chapter VI. "This chapter is a considerable extension of our existing law relating to embezzlement. (§§ 66, 71, and 72 of the Crimes and Punishment Act of 1850; Stats. 1850, p. 229, and § 70 of same act as amended, Stats. 1864, p. 40.) It is taken from the chapter of the New York Penal Code [Field Draft] on the same subject, pp. 217 et seq."

"Embezzlement" defined.

§ 503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

Legislation § 503. Enacted February 14, 1872; identical with Field Draft, § 601.

Citations. Cal. 61/185; 69/287; 77/563; 82/586; 91/269, 272; 100/468; 108/545; 120/694; 124/453; 133/280, 329; 142/218; 143/594.

Officers neglecting to pay over public moneys: See ante, § 425.

When officers of state or any association guilty of embezzlement.

§ 504. Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

Legislation § 504. 1. Enacted February 14, 1872 (almost identical with Field Draft, § 602), the section then beginning with the words "Every officer,

director," the beginning of the present section, up to the words "such officer, and," being added in 1880. 2. Amended by Code Amdts. 1880, p. 8.

Citations. Cal. 66/274; 69/237; 82/586; 106/812; 108/541, 542; 124/453, 454, 455; 134/303; 136/451; 143/87, 68. App. 4/226.

Public moneys: See ante, § 424; post, § 514.

**When carrier or other person having property for transportation, for hire, guilty of embezzlement.**

§ 505. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe-keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

Legislation § 505. Enacted February 14, 1872; almost identical with Field Draft, § 603.

**When contractor, etc., guilty of embezzlement.**

§ 506. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement.

Legislation § 506. 1. Enacted February 14, 1872. 2. Amended by Stats. 1907, p. 892, adding "and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it."

Citations. Cal. 69/237; 116/390; 136/443. App. 4/125.

**When bailee, tenant, or lodger guilty of embezzlement.**

§ 507. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

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Legislation § 507. Enacted February 14, 1872; almost identical with Field Draft, § 505.

Citations. Cal. 51, 173, 71, 139; 77, 547; 113, 129; 138, 465. App. 3/644, 646.

#### When clerk, agent, or servant guilty of embezzlement.

§ 508. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Legislation § 508. Enacted February 14, 1872; based on Field Draft, § 506.

Citations. Cal. 66/245; 69, 237; 71, 391; 77/182, 563; 100/468; 143/594. App. 4/125.

#### Distinct act of taking.

§ 509. A distinct act of taking is not necessary to constitute embezzlement.

Legislation § 509. Enacted February 14, 1872; identical with first clause of Field Draft, § 607.

Embezzlement and larceny distinguished: See ante, §§ 484, 503.

#### Evidence of debt undelivered may be subject of embezzlement.

§ 510. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

Legislation § 510. Enacted February 14, 1872; almost identical with Field Draft, § 608.

Written instruments completed, but not delivered: See also, ante, § 494.

#### Claim of title a ground of defense.

§ 511. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

Legislation § 511. Enacted February 14, 1872; almost identical with Field Draft, § 609.

Citations. Cal. 77/502; 120/26.

**Intent to restore property.**

§ 512. The fact that the accused intended to restore the property embezzled, is no ground of defense or mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, or an indictment found by a grand jury, charging the commission of the offense.

**Legislation § 512.** 1. Enacted February 14, 1872; identical with Field Draft, § 610. 2. Amendment by Stats. 1901, p. 465; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 682, (1) omitting the word "of" before "mitigation"; (2) adding "or an indictment found by a grand jury."

**Citations.** Cal. 185/308; 188/464.

**Actual restoration a ground for mitigation of punishment.**

§ 513. Whenever, prior to an information laid before a magistrate, or an indictment found by a grand jury, charging the commission of embezzlement, the person accused voluntarily and actually restores or tenders restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion.

**Legislation § 513.** 1. Enacted February 14, 1872; almost identical with Field Draft, § 611. 2. Amendment by Stats. 1901, p. 465; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 682, (1) changing "any" to "an" before "information"; (2) adding "or an indictment found by a grand jury" after "before a magistrate"; (3) changing "restored or tendered" to "restores or tenders."

**Citations.** Cal. 80/56.

**Compromise by permission of court discharges prisoner when:** Post, § 1878.

**Punishment.**

§ 514. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it must be taken as its value; if the embezzlement or defalcation is of the public funds of the United States, or of this state, or of any county or municipality within this state, the offense is a felony, and is punishable by imprisonment in the state prison not less than one nor more than ten years; and the person so convicted is ineligible thereafter to any office of honor, trust, or profit in this state.

**Legislation § 514.** 1. Enacted February 14, 1872 (almost identical with Field Draft, § 612), and then ended with the words "shall be taken as its value," the word "shall," in these words, being changed to "must" in 1905. 2. Amended by Code Amend. 1880, p. 8, adding the proviso, which then read, "provided, that if the embezzlement or defalcation be of the public funds of the United States, or of this state, or of any county, city and county, or municipality within this state, the offense is a felony, and shall be punishable by imprisonment in the state prison not less than one year nor more than ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this state." 3. Amendment by Stats. 1901, p. 465; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 682; the code commissioner saying, "The amendment substitutes 'in' for 'under' before the word 'this,' thus making a person convicted of embezzlement ineligible to any office in this state, whether it be a state office or not."

**Citations.** Cal. 61/185; 91/273; 94/575; 116/386.

**Embezzlement of public funds.** "No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide by law for the punishment of embezzlement or defalcation as a felony": Const., art. iv, § 21.

## CHAPTER VII.

### Extortion.

- § 518. "Extortion" defined.
- § 519. What threats may constitute extortion.
- § 520. Punishment of extortion in certain cases.
- § 521. Punishment of extortion committed under color of official right.
- § 522. Obtaining signature by means of threats.
- § 523. Sending threatening letters with intent to extort money, etc.
- § 524. Attempts to extort money or property by means of verbal threats.
- § 525. Officers of railroad companies making overcharges.
- § 526. Sale of tickets to theater, etc. [Repealed.]

**Code commissioners' note to Chapter VII.** "This chapter is from the New York Penal Code, [Field Draft,] p. 220, and includes our laws on the subject."

### "Extortion" defined.

§ 518. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

**Legislation § 518.** Enacted February 14, 1872; identical with Field Draft, § 618, N. Y. Pen. Code, § 552.



**Citations.** Cal. 81/277; 93/456; 123/522; 126/367; 127/214; 150/667.  
App. 7/365.

**What threats may constitute extortion.**

§ 519. Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,
2. To accuse him, or any relative of his, or member of his family, of any crime; or,
3. To expose, or impute to him or them any deformity or disgrace; or,
4. To expose any secret affecting him or them.

**Legislation** § 519. Enacted February 14, 1872; identical with Field Draft, § 614, N. Y. Pen. Code, § 553.

**Citations.** Cal. 57/563; 63/491; 81/277, 278, 279; 95/641, 642; 123/523; (subd. 2) 126/367. App. 7/366, 370; (subd. 1) 7/369, 370.

**Subd. 1. Sending threatening letter:** See post, § 523.

**Punishment of extortion in certain cases.**

§ 520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the state prison not exceeding five years.

**Legislation** § 520. Enacted February 14, 1872; almost identical with Field Draft, § 615, N. Y. Pen. Code, § 554.

**Citations.** Cal. 81/279. App. 7/369, 370.

**Robbery:** Ante, § 211.

**Punishment of extortion committed under color of official right.**

§ 521. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this code, is guilty of a misdemeanor.

**Legislation** § 521. Enacted February 14, 1872; almost identical with Field Draft, § 616, N. Y. Pen. Code, §§ 556, 557.

**Extortion, defined:** See ante, § 518.

**Obtaining signature by means of threats.**

§ 522. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Legislation § 522. 1. Enacted February 14, 1872; almost identical with Field Draft, § 617. 2. Amendment by Stats. 1901, p. 465; unconstitutional: See note, § 5, ante.

**Sending threatening letters with intent to extort money, etc.**

§ 523. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section five hundred and nineteen, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Legislation § 523. Enacted February 14, 1872; almost identical with Field Draft, § 618, N. Y. Pen. Code, § 558.

Citations. Cal. 81/278; 95, 641.

Threatening letter, sending of: See post, § 650.

Offense, when complete: See post, § 660.

**Attempts to extort money or property by means of verbal threats.**

§ 524. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section five hundred and nineteen, to extort money or other property from another, is guilty of a misdemeanor.

Legislation § 524. Enacted February 14, 1872; almost identical with Field Draft, § 619, N. Y. Pen. Code, § 560.

Citations. Cal. 68/491; 123/523.

**Officers of railroad companies making overcharges.**

§ 525. Every officer, agent, or employee of a railroad company who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

Legislation § 525. Enacted February 14, 1872.

Citations. Cal. 145/637.

Rate of charges: See Civ. Code, § 489.

§ 526. [Sale of tickets to theater, etc. Repealed.]

Legislation § 526. 1. Added by Stats. 1905, p. 140. 2. Repealed by Stats. 1907, p. 688; the code commissioner saying, "Section repealed because unconstitutional. (Ex parte Quarg, 149 Cal. 80, 82.)"

Citations. Cal. 149/80, 82.

## CHAPTER VIII.

### False Personation and Cheats.

- § 528. Marrying under false personation.
- § 529. Personating another in private or official capacity.
- § 530. Receiving money or property in a false character.
- § 531. Fraudulent conveyances.
- § 532. Obtaining money, property, or labor by false pretenses.
- § 533. Selling land twice.
- § 534. Married person selling lands under false representations.
- § 535. Mock auction.
- § 536. False statements by brokers, etc. Penalty.
- § 536a. Statement of sales.
- § 537. Defrauding proprietors of hotels, inns, etc.
- § 537a. Fraudulent registration of cattle.
- § 537b. Defrauding owners of livery-stables.
- § 537c. Unauthorized use of horses, etc.
- § 538. Removing mortgaged personal property. Further encumbrance or sale.
- § 538a. Misrepresentation of newspaper circulation.
- § 538b. Wearing badge of secret society unless entitled to.

#### Marrying under false personation.

§ 528. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Legislation § 528. Enacted February 14, 1872; almost identical with the introductory paragraph and subd. 1 of Field Draft, § 620, N. Y. Pen. Code, § 562; based on Crimes and Punishment Act, Stats. 1850, p. 240, § 90, which read: "§ 90. Every person who shall falsely represent or personate another, and in such assumed character shall marry another; become bail or surety for any party in any proceeding civil or criminal, before any court or officer authorized to take such bail or surety; or confess any judgment; or acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded; or do any other act in the course of any

our proceeding or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his rights or interests may in any manner be affected shall upon conviction be punished by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars."

#### **Personating another in private or official capacity.**

§ 528. Every person who falsely personates another in either his private or official capacity, and in such assumed character, either:

1. Takes bail or surety for any party in any proceeding whatsoever, before any court or officer authorized to take such bail or surety;

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,

3. Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars.

**Legislation § 528.** 1. Enacted February 14, 1872; almost identical with introductory paragraph and subds. 2, 3, 4, and final paragraph of Field Draft, § 620, N. Y. Pen. Code, § 562; Crimes and Punishment Act, Stats. 1850, § 90, p. 240. See ante, Legislation § 528. 2. Amendment by Stats. 1901, p. 466; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 694, (1) in introductory paragraph, adding "in either his private or official capacity" after "personates another"; (2) in subd. 1, omitting "or" at end of subdivision; (3) in subd. 2, changing "and" to "or" before "used as true"; (4) in subd. 3, changing "if it were done" to "if done"; the code commissioner saying, "The amendment being designed with the purpose of changing the construction put upon this section in *People v. Knox*, 119 Cal. 78, where it was held that the section did not apply to a case where a person falsely assumes an official character."

**Citations.** Cal. 77/439; (subd. 1) 119/78; (subd. 2) 77/487.

#### **Receiving money or property in a false character.**

§ 580. Every person who falsely personates another, in either his private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to

his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

**Legislation § 530.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 240, § 91 (Field Draft, § 621, N. Y. Pen. Code, § 564), which read: "§ 91. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner, and to the same extent as for feloniously stealing the money or property so received." 2. Amendment by Stats. 1901, p. 486; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 685; the code commissioner saying, "With the same object in view as in the amendment to the preceding section, the words 'in either his private or official capacity' have been inserted after 'another.'" See ante, Legislation § 529, for code commissioner's note.

**Citations.** Cal. 127/282.

#### **Fraudulent conveyances.**

§ 531. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

**Legislation § 531.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 245, § 129, which read: "§ 129. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same or any of them as true and done, had or made in good faith, or upon good considera-

tion, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars." 2. Repeal by Stats. 1901, p. 466; unconstitutional: See note, § 5, ante.

**Fraud.** Actual fraud is defined by Civ. Code, § 1572, and constructive fraud by § 1573.

**Fraudulent conveyances:** Civ. Code, §§ 3439-3442.

### **Obtaining money, property, or labor by false pretenses.**

§ 532. Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

**Legislation § 532.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 245, §§ 180, 181, which read: "§ 180. If any person, by false representations of his own wealth or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons obtain credit and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than six months. § 181. If any person or persons shall knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and on conviction, shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year, and be sentenced to restore the property so fraudulently obtained, if it can be done." When enacted in 1872, § 582 read: "Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets into possession of money or property, is punishable by imprisonment in the

county jail, not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained." 2. Amended by Stats. 1889, p. 14, changing the final words of the section to read, "is punishable in the same manner and to the same extent as for larceny of the money or property so obtained." 3. Amendment by Stats. 1901, p. 466; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 685; the code commissioner saying, "The amendment is intended to make it criminal to procure the labor or services of another, or to defraud him of real property, by representations known to be false. With respect to real property, this changes the rule announced in *People v. Cummings*, 114 Cal. 487."

Citations. Cal. 66/11; 70/117, 118, 529, 531, 532; 77/174; 82/273, 275; 84/38, 472, 474; 100/354; 102/562; 114/438; 119/597; 123/267; 127/282; 133/329; 135/269, 270; 138/528; 140/662; 145/737. App. 1/321; 7/100.

### Selling land twice.

§ 533. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barter, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Legislation § 533. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 246, § 132, which read: "§ 132. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the state prison not less than one nor more than ten years." The code commissioners say: "This section is founded on § 132 of the Crimes and Punishment Act of 1850. The words 'knowingly and fraudulently' are stricken out, and the phrase 'willfully and with intent to defraud previous or subsequent purchasers' inserted in lieu thereof. § 132 was evidently intended to embody the provisions of the statute of 27 Eliz., c. iv, which made it a criminal offense for any person to sell or convey land and the like with intent to defraud previous or subsequent purchasers, and proceeded upon the theory that either of the purchasers may be defrauded by

the second sale. The substitution of the word 'fraudulently' for the precise words of the English statute, which we have restored to the section, rendered § 132 obscure, and made it uncertain as to whether the fraud necessary to constitute the offense must move against previous or subsequent purchasers, whilst if directed against either, the case fell within the mischief the statute intended to guard against. This want of precision in § 132 has already been the subject of judicial observation in this state (*People v. Garnett*, 35 Cal. 470), and it has been held, Chief Justice Rhodes expressing no opinion, that the section must receive the same construction as the English statute cited; therefore it is manifestly proper that the language of the latter statute should be restored."

Citations. Cal. 85/87.

#### **Married person selling lands under false representations.**

§ 534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony.

Legislation § 534. Enacted February 14, 1872. The code commissioners say: "Founded on the act of April 27, 1863, to prevent the fraudulent sale or encumbrance of real estate by married women (Stats. 1863, p. 750, § 1), and extended to include the husband, and to prevent fraud in the attempted disposition of the homestead."

#### **Mock auction.**

§ 535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

Legislation § 535. Enacted February 14, 1872; based on Field Draft, § 627, N. Y. Pen. Code, § 574.

Auctioneers: See Pol. Code, §§ 8284 et seq.



**False statements by brokers, etc. Penalty.**

§ 536. Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor, or consignee, a false statement as to the price obtained for any property consigned or intrusted for sale, or as to the quality or quantity of any property so consigned or intrusted, or as to any expenditures made in connection therewith, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars and not less than two hundred dollars, or by imprisonment in the county jail not exceeding six months and not less than ten days, or by both such fine and imprisonment.

Legislation § 536. 1. Added by Code Amdts. 1880, p. 37, and then read the same as the amendment of 1909 (the present section), down to the words "or consignee," in the second instance, the section thereafter proceeding, "a false statement concerning the price obtained for, or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment." 2. Amended by Stats. 1909, p. 537.

**Statement of sales.**

§ 536a. It is hereby made the duty of every commission merchant, broker, factor, or consignee, to whom any property is consigned or intrusted for sale, to make, when accounting therefor or subsequently, upon the written demand of his principal or consignor, a true written statement setting forth the name and address of the person or persons to whom a sale of the said property, or any portion thereof, was made, the quantity so sold to each purchaser, and the respective prices obtained therefor; provided, however, that unless separate written demand shall be made as to each consignment or shipment regarding which said statement is desired, prior to sale, it shall be sufficient to set forth in said statement only so many of said matters above enumerated as said commission merchant, broker, factor, or consignee may be able to obtain from the books of account kept by him; and that said statement shall not be required in case of cash sales where the amount of the transaction is less than fifty dollars.

Any person violating the provisions of this section is guilty of a misdemeanor.

Legislation § 536a. Added by Stats. 1909, p. 1081.

#### **Defrauding proprietors of hotels, inns, etc.**

§ 537. Any person who obtains any food or accommodation at an hotel, inn, restaurant, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at an hotel, inn, restaurant, boarding-house, or lodging-house absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodations is guilty of a misdemeanor.

Legislation § 537. 1. Added by Stats. 1889, p. 44, the title of the act reading, "An Act to add a new section to the Penal Code, to be known as section five hundred and thirty-seven, relating to defrauding proprietors and managers of hotels, inns, restaurants, boarding-houses, and lodging-houses," the act (which omitted the section number specified in the title of the act, quoted supra, as well as omitting the enacting section, the number of which was inserted as the section number), reading, "Section 1. Any person who obtains any food or accommodation at an inn or boarding-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn or boarding-house by the use of any false pretense, or who, after obtaining credit or accommodation at any inn or boarding-house, absconds and surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 466; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1908, p. 22. Another section numbered 537 was added in 1887, quoted infra, Legislation § 588; q.v., as well as code commissioner's note to that section and to § 588.

Citations. Cal. 119/488; 121/329. App. 2/387.

#### **Fraudulent registration of cattle.**

§ 537a. Every person who by any false or fraudulent pretense obtains from any club, association, society, or company, organized for the purpose of improving the breed of cattle, horses, sheep, swine, or other domestic animals, a certificate of registration of any animal in the herd register, or any other register of any such club, association, society, or company, or a transfer of any such registration, and any

person who, for a valuable consideration, gives a false pedigree of any animal, with intent to mislead, is guilty of a misdemeanor.

**Legislation § 537a.** 1. Added by Stats. 1889, p. 85, as § 537½. 2. Amendment by Stats. 1901, p. 467, changing the number of the section to 537a; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 685, (1) omitting "shall" after "Every person who"; (2) changing (a) "obtain" to "obtains," (b) "who shall, for a legal consideration, give" to "who, for a valuable consideration, gives," and (c) "shall be guilty" to "is guilty"; (3) omitting section 2 of the act adding the section, which read, "Sec. 2. Every person willfully advertising any of such animals for purposes of copulation, or profit, as having a pedigree other than the true pedigree of such animal, shall forfeit all right by law to collect pay for the services of said animal"; the code commissioner saying, "Section 2 is omitted because not properly a part of the Penal Code."

#### **Defrauding owners of livery-stables.**

§ 537b. Any person who obtains any livery hire or other accommodation at any livery or feed stable, kept for profit, in this state, without paying therefor, with intent to defraud the proprietor or manager thereof; or who obtains credit at any such livery or feed stable by the use of any false pretense; or who after obtaining a horse, vehicle, or other property at such livery or feed stable, willfully or maliciously abuses the same by beating, goading, overdriving or other willful or malicious conduct, or who after obtaining such horse, vehicle, or other property, shall, with intent to defraud the owner, manager or proprietor of such livery or feed stable, keep the same for a longer period, or take the same to a greater distance than contracted for; or allow a feed-bill or other charges to accumulate against such property, without paying therefor; or abandon or leave the same, is guilty of a misdemeanor.

**Legislation § 537b.** 1. Added by Stats. 1903, p. 157, as § 537½. 2. Amended by Stats. 1905, p. 685, merely changing the number of the section from 537½ to 537b.

#### **Unauthorized use of horses, etc.**

§ 537c. Every owner, manager, proprietor, or other person, having the management, charge or control of any livery-stable, feed or boarding stable, and every person pasturing stock, who shall receive and take into his possession, charge, care or control, any horse, mare, or other animal, or any buggy, or other vehicle, belonging to any other

person, to be by him kept, fed, or cared for, and who, while said horse, mare or other animal or buggy or other vehicle, is thus in his possession, charge, care or under his control, as aforesaid, shall drive, ride or use, or knowingly permit or allow any person other than the owner or other person entitled so to do, to drive, ride, or otherwise use the same, without the consent or permission of the owner thereof, or other person charged with the care, control or possession of such property, shall be guilty of a misdemeanor.

Legislation § 537c. Added by Stats. 1909, p. 277.

**Removing mortgaged personal property. Further encumbrance or sale.**

§ 538. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling-stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situate when mortgaged, without the written consent of the mortgagee, or who sells, transfers, or in any manner further encumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further encumbered, is guilty of larceny, and is punishable accordingly; unless at or before the time of making such sale, transfer, or encumbrance, such mortgagor informs the person to whom such sale, transfer, or encumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made.

Legislation § 538. 1. Added (in part) by Stats. 1887, p. 87, as § 587, which read: "587. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, except locomotives, engines, rolling-stock of a railroad, steamboat machinery in actual use, and vessels, voluntarily removes or permits the removal of the mortgaged property from the place where it was situated at the time it was mortgaged, without the written consent of the mortgagee, with intent to deprive the mortgagee of his interest therein, is guilty of a misdemeanor." 2. Amended by Stats. 1898, p. 119 (approved March 9, 1893), to read:

"537. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling-stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, with the intent to defraud the mortgagee, his representatives or assigns, transfers, sells, takes, drives, or carries away, or otherwise disposes of, or permits the transferring, selling, taking, driving, or carrying away, or otherwise disposing of such mortgaged property, or any part thereof, from the county where it was situated at the time it was mortgaged, without the written consent of the mortgagee, is guilty of larceny, and shall be punished accordingly." 3. Added (in part) by Stats. 1893, p. 119, as § 538 (by the same act amending § 537, quoted supra), which read: "538. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling-stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, sells, transfers, or in any manner further encumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further encumbered, is guilty of larceny, and shall be punished accordingly; unless at or before the time of making such sale, transfer, or encumbrance, such mortgagor shall inform the person to whom such sale, transfer, or encumbrance may be made, of the existence of the prior mortgage, and shall inform the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made." 4. Repeal by Stats. 1901, p. 466, of § 537, as amended by Stats. 1893, p. 119, and § 538 amended (p. 467) to read same as the present § 538; unconstitutional: See note, § 5, ante. 5. Repeal by Stats. 1905, p. 685, of § 537, as amended by Stats. 1893, p. 119, and § 538 amended (p. 686) by the same act, the enacting paragraph reading, "Sec. 8. Section five hundred and thirty-eight of said code, as approved March 9, 1903, [1893; § 538 was not amended in 1903,] is hereby amended to read as follows," this so-called repeal and amendment being in fact a combination and amendment of § 537 as amended in 1893 and § 538; the code commissioner saying in his note to § 537, "There were two sections numbered 537. The one regarding the removal of mortgaged chattels (enacted in 1893) is repealed, the matter contained in it being sufficiently provided for in § 538, infra; the other (enacted in 1899, and amended in 1903) remained in force"; and in his note to § 538 saying, "The amendment extends the operation of the section to cases where personal property is taken, removed, or driven from the county in which it is mortgaged with the intention of defrauding the mortgagee. The change consists in the addition of the words 'with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who.' There were two sections of this number: one, added March 9, 1893, which was Pen. Code—17

amended as above set forth; the other, added March 11, 1898, which was renumbered (1905; 686) as 538a."

Citations. Cal. 119/488.

#### **Misrepresentation of newspaper circulation.**

§ 538a. Every proprietor or publisher of any newspaper or periodical who shall willfully and knowingly misrepresent the circulation of such newspaper or periodical, for the purpose of securing advertising or other patronage, shall be deemed guilty of a misdemeanor.

Legislation § 538a. 1. Added by Stats. 1898, p. 182, as § 538. 2. Amendment by Stats. 1901, p. 467, the code commissioners designating the section as 538½ and renumbering it 538a; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 686, merely changing the number from 538 to 538a.

#### **Wearing badge of secret society unless entitled to.**

§ 538b. Any person who willfully wears the badge, lapel-button, rosette, or other recognized and established insignia of any secret society, order, or organization, or uses the same to obtain aid or assistance within this state, unless entitled to wear or use the same, under the constitution, by-laws, or rules and regulations, or other laws or enactments of such order or society, is guilty of a misdemeanor.

Legislation § 538b. 1. Addition by Stats. 1901, p. 467; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 686; the code commissioner saying, "This section consists of the matter formerly in § 543½. The change is made by placing the matter in a section in the proper chapter. By some inadvertence the legislature placed it in the chapter providing for the punishment of persons fraudulently fitting out and destroying vessels."

## CHAPTER IX.

**Fraudulently Fitting Out and Destroying Vessels.**

§ 539. Captain or other officer willfully destroying vessel, etc.

§ 540. Other persons willfully destroying vessel, etc.

§ 541. Making false manifest, etc.

§ 542. [No section of this number.]

§ 543. [No section of this number.]

§ 543½. Prohibiting unauthorized wearing of society badges, etc. [Repealed, and re-enacted as § 538b.]

Code commissioners' note to Chapter IX. "This chapter is taken from the New York Penal Code, [Field Draft,] p. 227."

**Captain or other officer willfully destroying vessel, etc.**

§ 539. Every captain or other officer or person in command or charge of any vessel, who, within this state, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud any other person, is punishable by imprisonment in the state prison not less than three years.

**Legislation § 539.** Enacted February 14, 1872; based on Field Draft, § 628, N. Y. Pen. Code, § 575. The code commissioners say: "Injuring or destroying vessels upon the high seas is provided for by various acts of Congress. (See the acts collected, Brightly's Dig., 209-211.) The above section is therefore limited to acts committed within this state."

**Other persons willfully destroying vessel, etc.**

§ 540. Every person, other than such as are embraced within the last section, who is guilty of any act therein specified, is punishable by imprisonment in the state prison for a term not exceeding ten years.

**Legislation § 540.** Enacted February 14, 1872; based on Field Draft, § 629, N. Y. Pen. Code, § 576.

**Making false manifest, etc.**

§ 541. Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the state prison not exceeding three years.

Legislation § 541. Enacted February 14, 1872; based on Field Draft, §§ 630, 681, N. Y. Pen. Code, § 577.

Fictitious bill of lading, issuing of: See post, § 577.

§ 542. [No section of this number.]

§ 543. [No section of this number.]

§ 543½. [Prohibiting unauthorized wearing of society badges, etc.]

Legislation § 543½. 1. Added by Stats. 1899, p. 90, becoming a law, under constitutional provision, without governor's approval. 2. Repeal by Stats. 1901, p. 468; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 685, the section being now numbered 538b. See ante, Legislation § 538b, for code commissioner's note.

## CHAPTER X.

### Fraudulently Keeping Possession of Wrecked Property.

§ 544. Detaining wrecked property after salvage paid.

§ 545. Unlawfully taking or having possession of wrecked property.

#### Detaining wrecked property after salvage paid.

§ 544. Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both.

Legislation § 544. Enacted February 14, 1872; based on Stats. 1850, p. 176, § 24.

Wrecks and wrecked property: Pol. Code, §§ 2403-2418.

#### Unlawfully taking or having possession of wrecked property.

§ 545. Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the sheriff of the county where they were found, or notify him of his readiness to do so within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor.

Legislation § 545. Enacted February 14, 1872; based on Stats. 1850, p. 176, § 25.

Wrecks and wrecked property: Pol. Code, §§ 2403-2418.



CHAPTER XI.

**Fraudulent Destruction of Property Insured.**

§ 548. Burning or destroying property insured.

§ 549. Presenting false proofs in support of a claim upon policy of insurance.

**Burning or destroying property insured.**

§ 548. Every person who willfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person or of any other, is punishable by imprisonment in the state prison not less than one nor more than ten years.

**Legislation § 548.** Enacted February 14, 1872; based on Field Draft, § 682, N. Y. Pen. Code, § 578. The code commissioners say: "This section is substituted for § 7 of the act of April 19, 1856 (Stats. 1856, p. 132), and is extended to include every injury to property insured."

**Citations.** Cal. 120/169, 687. App. 8/378, 374.

**Arson:** See ante, § 447.

**Presenting false proofs in support of a claim upon policy of insurance.**

§ 549. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or by both.

**Legislation § 549.** Enacted February 14, 1872; almost identical with Field Draft, § 683, N. Y. Pen. Code, § 579.

**Citations.** App. 8/387.

**Notice and proof of loss:** See Civ. Code, §§ 2633-2637.

## CHAPTER XII.

## False Weights and Measures.

§ 552. "False weight" and "measure" defined.

§ 553. Using false weights or measures.

§ 554. Stamping false weight, measure, or tare on casks or packages.

§ 555. Sellers to give full weight.

**"False weight" and "measure" defined.**

§ 552. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

Legislation § 552. Enacted February 14, 1872. The code commissioners say: "Based on the act of April 4, 1861 (Stats. 1861, p. 86), establishing a standard of weights and measures."

Weights and measures: See Pol. Code, §§ 3209-3223.

**Using false weights or measures.**

§ 553. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Legislation § 553. Enacted February 14, 1872; identical with Field Draft, § 634, N. Y. Pen. Code, § 580. The code commissioners say: "Founded upon § 14 of the act cited in note to preceding section, and § 133 of the Crimes and Punishment Act of 1850. (Stats. 1850, p. 229.)"

**Stamping false weight, measure, or tare on casks or packages.**

§ 554. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells, or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

Legislation § 554. Enacted February 14, 1872; almost identical with Field Draft, § 640, N. Y. Pen. Code, § 585.

**Sellers to give full weight.**

§ 555. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor.

Legislation § 555. Added by Code Amdts. 1875-76, p. 112.

## CHAPTER XIII.

## Fraudulent Insolvencies by Corporations, and Other Frauds in Their Management.

- § 557. Fraud in subscriptions for stock of corporations.
- § 558. Frauds in procuring organization of corporation or increasing its capital.
- § 559. Unauthorized use of name in prospectus, etc.
- § 560. Misconduct of directors of stock corporations.
- § 561. Savings-bank officer overdrawing his account.
- § 562. Receiving deposits in insolvent banks.
- § 563. Frauds in keeping accounts in books of corporations.
- § 564. Officer of corporation publishing false reports, etc.
- § 565. Officer of corporation to permit an inspection.
- § 566. Officer of railroad company contracting debt in its behalf exceeding its available means.
- § 567. Debt contracted in violation of last section not invalid.
- § 568. Director of a corporation presumed to have knowledge of its affairs.
- § 569. Director present at meeting, when presumed to have assented to proceedings.
- § 570. Director absent from meeting, when presumed to have assented to proceedings.
- § 571. Foreign corporations.
- § 572. "Director" defined.

Code commissioners' note to Chapter XIII. "Most of the provisions of this chapter, which are taken from the New York Penal Code [Field Draft] (§§ 645 to 668), are new to our laws. The great importance that corporations are assuming in the country, the almost absolute power of the directors over the property of the corporation, and the numerous frauds that are perpetrated upon the community as well as upon shareholders, point the necessity for stringent penal enactments."

**Fraud in subscriptions for stock of corporations.**

§ 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Legislation § 557. Enacted February 14, 1872; identical with Field Draft, § 645. The code commissioners say: "This section is intended to reach a

species of fraud frequently practiced in the organization of corporations. (See *Palmer v. Lawrence*, 3 Sandf. 141; 1 Sedg. 389.)

Subscription to articles of incorporation: Civ. Code, § 292.

Subscription to capital stock: Civ. Code, § 293.

Oath to subscribers: Civ. Code, § 295.

#### **Frauds in procuring organization of corporation, or increasing its capital.**

§ 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

Legislation § 558. Enacted February 14, 1872; based on Field Draft, § 645, N. Y. Pen. Code, § 592.

False certificate, report, or notice. Civil liability of officers: See Civ. Code, § 316.

Corporations, organization of: Civ. Code, §§ 283 et seq.

Records: Civ. Code, §§ 377, 378.

Increasing stock: Civ. Code, § 359.

#### **Unauthorized use of name in prospectus, etc.**

§ 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Legislation § 559. Enacted February 14, 1872; identical with Field Draft, § 647.

Frauds in procuring organization, etc., of corporation: See ante, § 558.

#### **Misconduct of directors of stock corporations.**

§ 560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either:

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1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;

—Is guilty of a misdemeanor.

**Legislation § 560.** Enacted February 14, 1872; based on Field Draft, § 648, N. Y. Pen. Code, § 594.

**Citations.** Cal. 72/56, 58; 116/415.

**Dividends to be made from surplus profits:** Civ. Code, § 309.

**Officers of bank making illegal loans or investments:** See Civ. Code, § 581.

**Officer of bank advertising or making statement as to capital stock without showing amount paid up:** See Civ. Code, § 588a.

**Persons engaged in banking, guilty of misdemeanor, unless true name shown:** See Civ. Code, § 582.

### **Savings-bank officer overdrawing his account.**

§ 561. Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

**Legislation § 561.** 1. Enacted February 14, 1872; based on Field Draft, § 654, N. Y. Pen. Code, § 600. 2. Amendment by Stats. 1901, p. 468; unconstitutional: See note, § 5, ante.

### **Receiving deposits in insolvent banks.**

§ 562. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker,

who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

**Legislation § 562.** 1. Enacted February 14, 1872; based on Field Draft, § 655. N. Y. Pen. Code, § 601. 2. Amendment by Stats. 1901, p. 468; unconstitutional: See note, § 5, ante.

**Frauds in keeping accounts in books of corporations.**

§ 563. Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

**Legislation § 563.** Enacted February 14, 1872; almost identical with Field Draft, § 656.

**Citations.** Cal. 53/615; 103/202.

**Frauds in procuring organization, etc., of corporation:** See ante, § 558.

**Officer of corporation publishing false reports, etc.**

§ 564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or

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a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony.

**Legislation § 564.** 1. Enacted February 14, 1872 (almost identical with Field Draft, § 657, N. Y. Pen. Code, § 611), and then read: "Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in this chapter, is guilty of a misdemeanor." 2. Amended by Code Amtds. 1875-76, p. 112, to read: "Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony." 3. Amendment by Stats. 1901, p. 468; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 683; the code commissioner saying, "The amendment is intended to incorporate in the section such provisions of the statute of 1877-78, p. 695, as are not already sufficiently expressed therein. That statute, however, is limited to corporations whose stock is listed on the stock board or exchange. The amendment omits this limitation, for the reason that its constitutionality is doubtful."

**Citations.** Cal. 53/648.

**False reports or frauds:** See Civ. Code, § 816; ante, § 558.

### **Officer of corporation to permit an inspection.**

§ 565. Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

**Legislation § 565.** Enacted February 14, 1872; identical with Field Draft, § 658.

**Records of corporation:** See Civ. Code, §§ 377, 378.

### **Officer of railroad company contracting debt in its behalf exceeding its available means.**

§ 566. Every officer, agent, or stockholder of any railroad company, who knowingly assents to or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for

the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

**Legislation § 566.** Enacted February 14, 1872; identical with Field Draft, § 662.

**Debt contracted in violation of last section not invalid.**

§ 567. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

**Legislation § 567.** Enacted February 14, 1872; identical with Field Draft, § 663.

**Director of a corporation presumed to have knowledge of its affairs.**

§ 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

**Legislation § 568.** Enacted February 14, 1872; identical with Field Draft, § 664.

**Director present at meeting, when presumed to have assented to proceedings.**

§ 569. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

**Legislation § 569.** Enacted February 14, 1872; identical with Field Draft, § 665.

**Presence of directors:** See Civ. Code, §§ 309, 377.

**Director absent from meeting, when presumed to have assented to proceedings.**

§ 570. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter



occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

**Legislation § 570.** Enacted February 14, 1872; identical with Field Draft, § 666.

#### **Foreign corporations.**

§ 571. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state.

**Legislation § 571.** Enacted February 14, 1872; identical with Field Draft, § 667.

#### **"Director" defined.**

§ 572. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

**Legislation § 572.** Enacted February 14, 1872; identical with Field Draft, § 668.

### **CHAPTER XIV.**

#### **Fraudulent Issue of Documents of Title to Merchandise.**

- § 577. Issuing fictitious bills of lading, etc.
- § 578. Issuing fictitious warehouse receipts.
- § 579. Erroneous bills of lading or receipts issued in good faith excepted.
- § 580. Duplicate receipts must be marked "Duplicate."
- § 581. Selling, hypothecating, or pledging property received for transportation or storage.
- § 582. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property. [Repealed.]
- § 583. Property demanded by process of law.

#### **Issuing fictitious bills of lading, etc.**

§ 577. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation com-

any person carrying or transporting any carrier, who delivers any bill of lading, receipt or other voucher by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is not so actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such carrier, to be punished as expressed in such bill of lading, receipt or other voucher is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Legislation § 577. Enacted February 14, 1872; identical with Field Draft, § 624, N. Y. Pen. Code § 623.

Bill of lading: See Civ. Code §§ 2124 et seq.

False merchant receipt bill of lading, etc., issuing of: See ante, § 541.

#### Issuing fictitious warehouse receipts.

§ 578. Every person carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years or by a fine not exceeding one thousand dollars, or both.

Legislation § 578. Enacted February 14, 1872; identical with Field Draft, § 624, N. Y. Pen. Code § 629.

Bill of lading: See Civ. Code §§ 2126 et seq.

#### Erroneous bills of lading or receipts issued in good faith excepted.

§ 579. No person can be convicted of an offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew that such marks, labels, or brands were untrue.

**Legislation § 579.** Enacted February 14, 1872; identical with Field Draft, § 685, N. Y. Pen. Code, § 630.

**Duplicate receipts must be marked "Duplicate."**

§ 580. Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

**Legislation § 580.** Enacted February 14, 1872; almost identical with Field Draft, § 686, N. Y. Pen. Code, § 631.

**Duplicate bills:** See Civ. Code, § 2130.

**Selling, hypothecating, or pledging property received for transportation or storage.**

§ 581. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

**Legislation § 581.** Enacted February 14, 1872; almost identical with Field Draft, § 687, N. Y. Pen. Code, § 632.

**Citations.** Cal. 149/434.

§ 582. [Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property. Repealed.]

**Legislation § 582.** 1. Enacted February 14, 1872; based on Field Draft, § 688, N. Y. Pen. Code, § 633. 2. Repealed by Code Amdts. 1873-74, p. 434.

**Property demanded by process of law.**

§ 583. The last two sections do not apply where property is demanded or sold by virtue of process of law.

**Legislation § 583.** Enacted February 14, 1872; based on Field Draft, § 689, N. Y. Pen. Code, § 634.

## CHAPTER XV.

**Malignant Injuries to Railroad Bridges, Highways, Bridges, and Telegraphs.**

- § 587. Injuries to railroads and railroad bridges.
- § 587a. Tampering with air-brakes.
- § 587b. Trespassing on railroad trains.
- § 587c. Evading payment of railroad fare.
- § 588. Injuries to highways, private ways, and bridges.
- § 589. Injuries to toll houses and gates.
- § 590. Injuries to guide-posts.
- § 590a. Informer to receive half of fines collected.
- § 591. Injuries to telegraph or telephone lines.
- § 592. Water-ditches, etc., penalty for trespass or interference with.
- § 593. Penalty for interference with electric wires.
- § 593a. Driving nails, etc., in wood intended for manufacture of lumber.

**Injuries to railroads and railroad bridges.**

§ 587. Every person who maliciously, either:

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad:

—Is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not less than six months.

**Legislation § 587.** 1. Enacted February 14, 1872 based on Field Draft, § 690, N. Y. Pen. Code, § 635 Stats. 1861, p. 625, § 53. 2. Amendment by Stats. 1901, p. 468, unconstitutional. See note, § 5, ante.

**Citations.** Cal. 75 571.

**Placing obstructions on tracks:** See ante, § 213.

**Malignant injuries to bridge:** See post, § 607.

**Tampering with air-brakes.**

§ 587a. Every person, who, without being thereunto duly authorized by the owner, lessee, or person or corporation engaged in the operation of any railroad, shall manipulate or in any wise tamper or interfere with any air brake or other device, appliance or appara-

tus in or upon any car or locomotive upon such railroad, and used or provided for use in the operation of such car or locomotive, or of any train upon such railroad, or with any switch, signal or other appliance or apparatus used or provided for use in the operation of such railroad, shall be deemed guilty of a misdemeanor.

**Legislation § 587a.** Added by Stats. 1909, p. 608; approved March 22, 1909. At the same session of the legislature, another section numbered 587a was enacted (Stats. 1909, p. 458), approved March 19, 1909, differing from the text, supra, only in the fact that it contained, at the end of the section, a punishment clause, reading, "and upon conviction thereof shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment."

#### **Trespassing on railroad trains.**

§ 587b. Every person, who shall, without being thereunto authorized by the owner, lessee, person or corporation operating any railroad, enter into, climb upon, hold to, or in any manner attach himself to any locomotive-engine tender, freight or passenger car upon such railroad, or any portion of any train thereon, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

**Legislation § 587b.** Added by Stats. 1909, p. 590.

#### **Evading payment of railroad fare.**

§ 587c. Every person who fraudulently evades, or attempts to evade the payment of his fare, while traveling upon any railroad, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

**Legislation § 587c.** Added by Stats. 1909, p. 575. The code commissioners in 1901 made an addition of a section covering the offense specified supra (Stats. 1901, p. 456, § 369g); unconstitutional: See note, § 5, ante.

#### **Injuries to highways, private ways, and bridges.**

§ 588. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the state

prison not exceeding five years, or in the county jail not exceeding one year.

Legislation § 588. Enacted February 14, 1872; based on Field Draft, § 692, N. Y. Pen. Code, § 639; Stats. 1861, p. 397, § 20; Stats. 1861, p. 625, § 33; Stats. 1855, p. 192, §§ 12, 13.

Citations. Cal. 136 456, 550.

Malicious injuries to bridges: See post, § 607.

#### Injuries to toll houses and gates.

§ 589. Every person who maliciously injures or destroys any toll-house or turnpike-gate, is guilty of a misdemeanor.

Legislation § 589. Enacted February 14, 1872; based on Field Draft, § 693, N. Y. Pen. Code, § 639; Stats. 1853, p. 176, § 32.

#### Injuries to guide-posts.

§ 590. Every person who maliciously removes, destroys, injures, breaks or defaces any mile post, board or stone, or guide-post erected on or near any highway, or any inscription thereon, is guilty of a misdemeanor.

Legislation § 590. 1. Enacted February 14, 1872 (based on Field Draft, § 694, N. Y. Pen. Code, § 639; Stats. 1853, p. 176, § 32), and then read: "Every person who maliciously removes or injures any mile board, post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor." 2. Amended by Stats. 1907, p. 892.

#### Informer to receive half of fines collected.

§ 590a. One half of all fines imposed and collected under the provisions of section five hundred and ninety shall be paid to the informer who first causes a complaint to be filed charging the defendant with the violation of said section.

Legislation § 590a. Added by Stats. 1907, p. 892.

#### Injuries to telegraph or telephone lines.

§ 591. Every person who maliciously takes down, removes, injures or obstructs or makes any unauthorized connection with any line of telegraph or telephone, or any other line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

Legislation § 591. 1. Enacted February 14, 1872 (based on Field Draft, § 695, N. Y. Pen. Code, § 639; Stats. 1862, p. 288, § 8), and then read:

"Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor." 2. Amended by Stats. 1901, p. 469; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 683, to read: "Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph or telephone, or any other line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor." 4. Amended by Stats. 1909, p. 272.

Citations. Cal. 127/815, 817.

#### **Water-ditches, etc., penalty for trespass or interference with.**

§ 592. Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir used for the purpose of holding or conveying water for manufacturing, agricultural, mining, irrigating or generation of power, or domestic uses, or who shall without like authority, raise, lower or otherwise disturb any gate or other apparatus thereof, used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water, is guilty of a misdemeanor.

Legislation § 592. 1. Added by Code Amdts. 1877-78, p. 118. 2. Amended by Stats. 1899, p. 146, (1) adding "irrigating or generation of power" after "mining," and (2) substituting "apparatus" for "appurtenance."

Stealing water: See ante, § 499.

Malicious injury to canal, flume, etc.: See post, § 607.

#### **Penalty for interference with electric wires.**

§ 593. Every person who unlawfully and maliciously takes down, removes, injures, interferes with, or obstructs any line erected or maintained by proper authority for the purpose of transmitting electricity for light, heat, or power, or any part thereof, or any insulator or cross-arm, appurtenance or apparatus connected therewith, or severs or in any way interferes with any wire, cable, or current thereof, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year.

Legislation § 593. Added by Stats. 1901, p. 92, becoming a law, under constitutional provision, without governor's approval.

Citations. Cal. 148/370, 378.

Driving nails, etc., in wood intended for manufacture of lumber.

§ 593a. Every person who maliciously drives or places in any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that such saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber, is guilty of a felony.

Legislation § 593a. 1 Added by Stat's 1911, p. 469; unconstitutional: See note § 5 ante. 2 Added by Stat's 1915, p. 683; the code commissioner saying, "This is a codification of the statute of 1875-76, p. 32, relating to the protection of lumber manufacturers."



## TITLE XIV.

**Malicious Mischief.**

- § 594. Malicious mischief in general, defined.
- § 595. Specifications in following sections not restrictive of last section.
- § 596. Poisoning cattle.
- § 597. Cruelty to animals.
- § 597a. Unnecessary torture, suffering or cruelty.
- § 597a. Docking tails of horses.
- § 597b. Fighting animals.
- § 597b. Registration of docked horses. County clerk to keep record.
- § 597c. Training for fighting, or being present at fight.
- § 597c. Evidence.
- § 597d. Arrests without warrants.
- § 597d. Violation a misdemeanor. Certain stock excepted.
- § 597e. Impounding without food or water.
- § 597f. Permitting animals to go without care. Abandoned animals to be killed.
- § 597g. Keepers of stallions, etc.
- § 598. Killing, etc., birds in cemeteries.
- § 598a. Killing or detaining homing pigeons.
- § 599. Killing gulls or cranes. Destroying nests or eggs.
- § 599a. Prosecutions.
- § 599b. Words defined.
- § 599c. Not to interfere with game laws.
- § 599d. Docking of tails.
- § 599e. Animals to be killed when unfit for work.
- § 599f. Killing of elk a felony.
- § 600. Burning structures, etc., not the subject of arson.
- § 601. Using explosives in destroying or injuring buildings, etc.
- § 602. Malicious injury to freehold.
- § 603. Limitation upon the operations of the preceding section. [Repealed.]
- § 604. Injuries to standing crops, etc.
- § 605. Removing, defacing, or altering landmarks.
- § 606. Destroying or injuring jails.
- § 607. Destroying or injuring bridges, dams, levees, etc.
- § 608. Burning or injuring rafts.
- § 608a. Setting vessels adrift.
- § 608b. Injuring vessels.
- § 608c. Sinking vessels a felony.
- § 609. Damages, etc., to buoy and beacon.
- § 610. Masking or removing signal lights, or exhibiting false lights.
- § 611. Obstructing navigable streams.
- § 612. Depositing sawdust, etc., in Humboldt Bay.

- § 613. Throwing overboard ballast, or otherwise obstructing the navigation of any harbor, etc.
- § 614. Mooring vessels to buoys.
- § 615. Injuries to signals, monuments, etc., erected in United States coast survey.
- § 616. Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.
- § 617. Injuring or destroying written instrument.
- § 618. Opening or publishing sealed letters.
- § 619. Disclosing contents of telegraphic or telephonic messages.
- § 620. Altering telegraphic or telephonic messages.
- § 621. Opening telegraphic or telephonic messages.
- § 622. Injuring works of art or improvements in any city, town, or village.
- § 623. Mutilation of books, etc., in public libraries and museums.
- § 623½. Willful detention of library books.
- § 624. Breaking or obstructing gas or water pipes, etc.
- § 625. Drawing water from works after they have been closed.
- § 625a. Unlawful interferences with fire-alarm apparatus. Penalty.

#### Malicious mischief in general, defined.

§ 594. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor.

Legislation § 594. Enacted February 14, 1873; based on Field Draft, § 696, N. Y. Pen. Code, § 640.

Jurisdiction of police court: See Pen. Code, § 4426.

#### Specifications in following sections not restrictive of last section.

§ 595. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

Legislation § 595. 1. Enacted February 14, 1873; almost identical with Field Draft, § 697. 2. Amendment by Stats. 1901, p. 469; unconstitutional: See note, § 5, ante.

#### Poisoning cattle.

§ 596. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Legislation § 596. Enacted February 14, 1873; based on Field Draft, § 698, N. Y. Pen. Code, § 660.

Citations. Cal. 81/212, 213.

Cruelty to animals: See post, § 597.

### Cruelty to animals.

§ 597. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter or protection from the weather, or who drives, rides or otherwise uses the same when unfit for labor, is for every such offense, guilty of a misdemeanor.

Legislation § 597. 1. Enacted February 14, 1872 (almost identical with Field Draft, § 699), and then read: "Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 469; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 679, and then read the same as the amendment of 1909, except that it had the word "cruelly" before "drives, rides," at end of section; the code commissioner saying, "The amendment consolidates the present § 597 with § 6 of the statute of 1873-74, p. 499, as amended 1901, p. 285, for the more effectual prevention of cruelty to animals." 4. Amended by Stats. 1909, p. 999.

Citations. Cal. 184/501.

Act to prevent cruelty to animals: See post, Appendix, tit. "Animals."

### Unnecessary torture, suffering or cruelty.

§ 597a. Whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor; and whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle and its contents, together with the horse or team at-

and any necessary expense incurred for taking care of and keeping the same, as a lien thereon, to be paid before the same can be lawfully recovered, and if such expense, or any part thereof, remains unpaid it may be recovered, by the person incurring the same, of the owner of such domestic animal, in an action therefor.

**Legislation § 597a.** 1. Addition by Stats. 1901, p. 469; unconstitutional. See note, § 5, ante. 2. Added by Stats. 1905, p. 679, in the identical language of the unconstitutional section supra, being a codification of Stats. 1873-74, p. 500, § 7. Another section numbered 597a was added in 1907; q.v. infra.

#### **Docking tails of horses.**

**§ 597a.** It shall be unlawful for any person or persons to dock the tail of any horse, within the state of California, or to procure the same to be done, or to import or bring into this state, any docked horse, or horses, or to drive, work, use, race or deal in any unregistered docked horse, or horses, within the state of California except as provided in section five hundred and ninety-seven d of this code.

**Legislation § 597a.** Added by Stats. 1907, p. 249; the code commissioner saying in his note to §§ 597a, 597b, 597c, 597d, 597e, 597f, "These sections are a codification of §§ 7, 8, 9, 11, 12 and 13 of the last-named statute, [Stats. 1873-74, p. 499.] as amended 1901, p. 285."

#### **Fighting animals.**

**§ 597b.** Any person who, for amusement or gain, causes any bull, bear, cock, dog, or other animal to fight with like kind or different kind of animal or creature, or with any human being; or who, for amusement or gain, worries or injures any such bull, bear, cock, dog or other animal, or causes any such bull, bear, cock, dog or other animal to worry or injure each other; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets, or is present at such fighting or worrying of such animal or creature, as a spectator, is guilty of a misdemeanor.

**Legislation § 597b.** 1. Addition by Stats. 1901, p. 470; unconstitutional. See note, § 5, ante. 2. Added by Stats. 1905, p. 679, in the identical language of the unconstitutional section supra, being a codification of Stats. 1873-74, p. 500, § 8. 3. Amended by Stats. 1907, p. 845. Another section numbered 597b was added in 1907; q.v. infra.

**Registration of docked horses. County clerk to keep record.**

§ 597b. Within thirty days after the passage of this act, every owner, or user of any docked horse, within the state of California, shall register his or her docked horse, or horses by filing in the office of the county clerk of the county in which such docked horse, or horses, may then be kept, a certificate, which certificate shall contain the name, or names of the owner, together with his or her post-office address, a full description of the color, age, size and the use made of such docked horse, or horses; which certificate shall be signed by the owner, or his, or her agent. The county clerk shall number such certificate consecutively and record the name in a book, or register to be kept for that purpose only; and shall receive as a fee for recording of such certificate, the sum of fifty cents, and the clerk shall thereupon issue to such person so registering such horse or horses a certificate containing the facts recited in this section which upon demand shall be exhibited to any peace-officer, and the same shall be conclusive evidence of a compliance with the provisions of section five hundred and ninety-seven a of this code.

Legislation § 597b. Added by Stats. 1907, p. 269. See ante, Legislation § 597a (second section of this number), for code commissioner's note. See also, supra, another section numbered 597c.

**Training for fighting, or being present at fight.**

§ 597c. Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition, or is present at such exhibition, is guilty of a misdemeanor.

Legislation § 597c. 1. Addition by Stats. 1901, p. 470; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 680, in the identical language of the unconstitutional section supra, being a codification of Stats. 1873-74, p. 501, § 9. Another section numbered 597c was added in 1907; q.v., infra.

**Evidence.**

§ 597c. The driving, working, keeping, racing or using of any unregistered docked horse, or horses, after sixty days after the pass-

age of this act shall be deemed prima facie evidence of the fact that the party driving, working, keeping, racing or using such un-registered docked horse, or horses, docked the tail of such horse or horses.

Legislation § 571c. Added by Stats. 1947, p. 279. See ante, Legislation § 557a second section of this number for code commissioner's note. See also supra, another section numbered 571c.

#### Arrests without warrants.

§ 597d. Any sheriff, constable, police, or peace officer, or officer qualified as provided in section six hundred and seven f of the Civil Code, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

Legislation § 597d. 1. Added by Stats. 1941, p. 470; unconstitutional: See ante, § 5, ante. 2. Added by Stats. 1976, p. 690, in the identical language of the unconstitutional section supra, being a codification of Stats. 1971-74, p. 521, § 11. Another section numbered 597d was added in 1907; q.v. infra.

#### Violation a misdemeanor. Certain stock excepted.

§ 597d. Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor; provided, however, that the provisions of sections five hundred and ninety-seven a, five hundred and ninety-seven b, and five hundred and ninety-seven c, shall not be applied to persons owning or possessing any docked pure-bred stallions and mares imported from foreign countries for breeding or exhibition purposes only, as provided by an act of Congress entitled "An Act regulating the importation of breeding animals" and approved March third, nineteen hundred and three, and to docked native bred stallions and mares brought into this state and used for breeding or exhibition purposes only; and provided further, that a description of each such animal so brought into the state, together with the date of importation and name and address of importer, be filed with the county clerk of the county where such animal is kept, within thirty days after the importation of such animal.

Legislation § 597d. Added by Stats. 1907, p. 270. See ante, Legislation § 597a (second section of this number), for code commissioner's note. See also, supra, another section numbered 597d.

**Impounding without food or water.**

§ 597e. Any person who impounds, or causes to be impounded in any pound, any domestic animal, must supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor. In case any domestic animal is at any time impounded, as aforesaid, and continues to be without necessary food and water for more than twelve consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any pound in which any such domestic animal is confined, and supply it with necessary food and water so long as it remains so confined. Such person is not liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and such animal is not exempt from levy and sale upon execution issued upon a judgment therefor.

Legislation § 597e. 1. Addition by Stats. 1901, p. 470; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 680, in the identical language of the unconstitutional section supra, being a codification of Stats. 1873-74, p. 501, § 12.

**Permitting animals to go without care. Abandoned animals to be killed.**

§ 597f. Every owner, driver, or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square, or lot, of any city, city and county, or township, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace-officer, or officer of the humane society, to take possession of the animal so abandoned or neglected and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm, or crippled animal which shall be abandoned in any city, city and county, or township, may, if after due search no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace-officers, or an officer of said society, to cause the same to be killed on in-

formation of such animal. Such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness, or neglect is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in the custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until it is deemed to be in a suitable condition to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered.

**Legislation § 597g.** 1. Addition by Stats. 1901, p. 471; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 640, being an amendment of the unconstitutional section supra, and a codification of Stats. 1873-74, p. 501, § 13, as amended by Stats. 1901, p. 144, § 5. See ante. Legislation § 597a, second section of this number, for code commissioner's note.

#### **Keepers of stallions, etc.**

**§ 597g.** Every person who lets to mares or jennies any stallion or jack within the limits of any city, town, or village, or within four hundred yards thereof, except in an inclosure sufficient to obstruct the view of all the inhabitants within such limits, and every person in charge of any stallion, bull, boar, ram, or buck goat who turns out or permits such animal to be turned out or run at large in any county, is guilty of a misdemeanor and punishable by a fine of not less than five [n] or more than twenty dollars, or by imprisonment in the county jail not less than thirty days or by both such fine and imprisonment.

**Legislation § 597g.** 1. Addition by Stats. 1901, p. 471; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 678; the code commissioner saying, "The statute of 1873-74, p. 228, to prevent stallions running at large, and of 1877-78, p. 437, respecting buck goats, and of 1871-72, p. 63, to provide for the keeping of stallions, are codified in this section, and makes the law concerning the running at large of stallions in Sacramento and Mono counties, by extending its provisions, applicable to the state at large."

#### **Killing, etc., birds in cemeteries.**

**§ 598.** Every person who, within any public cemetery or burying-ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.



**Legislation § 598.** Enacted February 14, 1872. The code commissioners say: "This section is founded on a statute in relation to cemeteries in Nevada County. (Stats. 1867-68, p. 26.) There is no reason why the same act committed in another county should not be visited with the like punishment."

#### **Killing or detaining homing pigeons.**

**§ 598a.** Every person, other than the owner thereof, who shoots, maims, kills, or detains any Antwerp, messenger, or homing pigeon is guilty of a misdemeanor and punishable by a fine of not less than ten nor more than twenty-five dollars, or by imprisonment in the county jail not exceeding fifty days.

**Legislation § 598a.** 1. Addition by Stats. 1901, p. 471; unconstitutional: See note, § 5 ante. 2. Added by Stats. 1905, p. 687; the code commissioner saying, "This is a codification of the statute of 1897, p. 87, for the protection of Antwerp, messenger, or homing pigeons."

#### **Killing gulls or cranes. Destroying nests or eggs.**

**§ 599.** Every person who willfully and knowingly kills or destroys any of that species of sea-bird known as gulls, or who willfully and knowingly shoots, wounds, traps, snares, or in any other manner catches or captures any white or blue crane, or who knowingly takes, injures, or destroys the nest of any white or blue crane, or takes, injures, or destroys the eggs of any such crane in the nest or otherwise, is guilty of a misdemeanor and punishable by a fine of not less than five nor more than one hundred dollars, or by imprisonment of not less than five nor more than one hundred days, or by both such fine and imprisonment.

**Legislation § 599.** 1. Addition by Stats. 1901, p. 471; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 687, in the identical language of the unconstitutional section supra; the code commissioner saying, "The statute of 1875-76, p. 287, to protect sea-gulls in the neighborhood of Santa Monica, and the statute of 1889, p. 205, to prevent the destruction of blue cranes, were in 1905 codified in this section. At the same session a § 599 (not proposed by the commissioner), referring to the killing of elk. To change this a bill was passed in 1907, under the provisions of which the former § 599 was left intact, while the latter was repealed and re-enacted as § 599f." The original code § 599 was entitled "Killing seals and sea-lions within one mile of Cliff House," and was repealed by Code Amdts. 1880, p. 5.

§ 599b. Whenever it shall be made known to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds is being, or is about to be violated in any particular building or place, such magistrate shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or other if any incorporated municipality qualified as provided by law, authorizing him to enter and search such building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring such person before some court or magistrate of competent jurisdiction within the city, city and county, or township within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a violation of section five hundred and ninety-seven.

Legislation § 599b. 1. Added by Stats. 1901, p. 472; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1915, p. 631; the code commissioner saying: "This section is a codification of § 10 of the statute of 1873-74, p. 499, as amended 1901, p. 266, for the prevention of cruelty to animals."

#### Words defined.

§ 599b. In this title the word "animal" includes every dumb creature; the words "torment," "torture," and "cruelty" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, such corporation, must be held to be the act and knowledge of such corporation as well as such agent or employee.

Legislation § 599b. 1. Addition by Stats. 1901, p. 472; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 681; the code commissioner saying in his note to §§ 599b, 599c: "§§ 16 and 17 of the statute of 1873-74, p. 499, for the more effectual prevention of cruelty to animals, are codified in the above sections."

#### Not to interfere with game laws.

§ 599c. No part of this title shall be construed as interfering with any of the laws of this state known as the "game laws," or any laws

for or against the destruction of certain birds, nor must this title be construed as interfering with the right to destroy any venomous reptile, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

**Legislation § 599c.** 1. Addition by Stats. 1901, p. 472; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 681. See ante, Legislation § 599b, for code commissioner's note.

#### **Docking of tails.**

§ 599d. Whoever shall cut the solid part of the tail of any horse in the operation known as "docking," or in any other operation performed for the purpose of shortening the tail, and whoever shall cause the same to be done, or assist in doing such cutting, is guilty of a misdemeanor.

**Legislation § 599d.** Added by Stats. 1905, p. 681; the code commissioner saying in his note to §§ 599d, 599e, "Codifying §§ 7 and 8 of the statute of 1901, p. 287, adding §§ 20 and 21 to the statute of 1878-74, p. 499."

#### **Animals to be killed when unfit for work.**

§ 599e. Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within twelve hours after being notified by any peace-officer, or officer of said society, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace-officer, or officer of said society, to immediately kill such animal; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care.

**Legislation § 599e.** Added by Stats. 1905, p. 681. See ante, Legislation § 599d, for code commissioner's note.

**Killing of elk a felony.**

§ 599f. Every person who willfully kills any elk within this state is guilty of a felony and punishable by imprisonment in the state prison for a term not exceeding two years.

Legislation § 599f. 1. Added by Stats. 1905, p. 218, as § 599. 2. Repealed by Stats. 1907, p. 687, and re-enacted, by the same act, as § 599f. See ante, Legislation § 599, for code commissioner's note.

**Burning structures, etc., not the subject of arson.**

§ 600. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any structure, snow-shed, vessel, or boat, not the subject of arson, or any text, or any stack of hay or grain or straw of any kind, or any pile of baled hay or straw, or any pile of potatoes, or beans, or vegetables, or produce, or fruit of any kind, whether sacked, boxed, crated, or not, or any growing or standing grain, grass, or tree, or any fence, or any railroad car, lumber, cordwood, railroad ties, telegraph or telephone poles, or shakes, or any tule-land or peat-ground of the value of twenty-five dollars or over, not the property of such person, is punishable by imprisonment in the state prison for not less than one year, nor more than ten years.

Legislation § 600. 1. Enacted April 1, 1872 (based on Field Draft, § 703, N. Y. Pen. Code, § 637; Crimes and Punishment Act, as amended and supplemented by Stats. 1856, p. 132, § 5; Stats. 1871-72, p. 896, § 1), and then read: "Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snow-shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the state prison for not less than one nor more than ten years." 2. Amended by Stats. 1901, p. 268, becoming a law, under constitutional provision, without governor's approval, March 11, 1901, and read the same as the present section, except for the changes made in 1905. 3. Amendment by Stats. 1901, p. 473; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 711, (1) omitting the word "or" before "vessel"; (2) changing "telegraph poles" to "telegraph or telephone poles"; (3) adding the word "for" before "not less than one year."

**Using explosives in destroying or injuring buildings, etc.**

§ 601. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, boat, railroad, tram-road, or cable-road, or any train, or car, or any depot,

stable, car-house, theater, schoolhouse, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitroglycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound or explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and punishable by imprisonment in the state prison not less than one year.

**Legislation § 601.** 1. Enacted February 14, 1872 (almost identical with Field Draft, § 705, N. Y. Pen. Code, § 636), and then read: "Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony." 2. Amendment by Stats. 1901, p. 478; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 687; the code commissioner saying, "The section is amended to conform it to § 8 of the statute of 1887, p. 110, to protect life and property against the careless and malicious use or handling of dynamite and other explosives."

**Citations.** App. 1/397, 398.

**Explosives, act relating to:** See post, Appendix, tit. "Explosives."

### **Malicious injury to freehold.**

**§ 602.** Every person who willfully commits any trespass by either:

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another;
2. Carrying away any kind of wood or timber lying on such lands;
3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof;
4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone;
5. Digging, taking, or carrying away from land in any city or town, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil or stone;
6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation

of any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto;

7. Entering upon any lands owned by any other person whereon oysters or other shell-fish are planted or growing; or injuring, gathering, or carrying away any oysters or other shell-fish planted, growing, or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands;

8. Willfully opening, tearing down, or otherwise destroying any fence on the inclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, sign-board, or other notice forbidding shooting on private property; or

9. Entering any inclosure belonging to, or occupied by, another for the purpose of hunting, shooting, killing, or destroying any kind of game within such inclosure, without having first obtained permission from the owner of such inclosure;

Is guilty of a misdemeanor.

Legislation § 602. 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 246, § 138; Stats. 1862, p. 307; Stats. 1863, p. 739; Stats. 1863-64, p. 136; Stats. 1863-64, p. 361; Stats. 1865-66, p. 710, § 6. The code commissioners say of subd. 6: "This provision is rendered necessary by the practice, unfortunately common, of affixing to any picturesque rock or point of land, some advertisement of a current nostrum, etc. This is now only a simple trespass, but it should be a misdemeanor." When § 602 was enacted in 1872, it contained only six subdivisions, subd. 7 being added in 1877-78, and subds. 8 and 9 in 1905; subd. 2 then reading, "2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or." 2. Amended by Code Amdts. 1873-74, p. 434, omitting from subd. 2, the words "that has been cut down and is" before "lying." 3. Amended by Code Amdts. 1877-78, p. 118, (1) adding subd. 7, and (2) running in at the end of this subdivision the final paragraph of the original code, "—Is guilty of a misdemeanor." 4. Amendment by Stats. 1901, p. 474; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 688, (1) omitting the word "or" from the end of subds. 2, 3, 4, 5, 6, and 7; (2) in subd. 5, changing "from any land in any of the cities of the state" to "from land in any city or town"; (3) in subd. 7, omit-

ting "or persons" after "other person"; (4) in subd. 7, omitting from end of subdivision the words "is guilty of a misdemeanor," making a paragraph thereof, and transposing same to end of section; (5) adding subds. 8 and 9; the code commissioner saying, "The eighth subdivision is a codification of the statute of 1871-72, p. 384, and the ninth is a codification of part of § 3 of the statute of 1875-76, p. 408, to prevent hunting upon inclosed lands."

**Citations.** Cal. 112/204.

**Act to prevent persons passing through inclosures:** See post, Appendix, tit. "Fences and Inclosures."

**Acts to prevent the leaving open of inclosures:** See post, Appendix, tit. "Fences and Inclosures."

**Act to prevent hunting on inclosed lands:** See post, Appendix, tit. "Fences and Inclosures."

**Act to protect Big Tree groves:** See post, Appendix, tit. "Growing Trees."

**§ 603.** [Limitation upon the operations of the preceding section. Repealed.]

**Legislation § 603.** 1. Enacted February 14, 1872. 2. Repeal by Stats. 1901, p. 475; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 689; the code commissioner saying, "The section declaring that certain injuries to trees on the lands of the United States, including the cutting of them, do not constitute public offenses, is hereby repealed, as it is obviously improper for the state to undertake to legalize trespasses upon, or injuries to, the public lands of the Federal government."

**Injuries to standing crops, etc.**

**§ 604.** Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, is guilty of a misdemeanor.

**Legislation § 604.** Enacted February 14, 1872; based on Field Draft, § 708, N. Y. Pen. Code, § 637.

**Removing, defacing, or altering landmarks.**

**§ 605.** Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument;

or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

—Is guilty of a misdemeanor.

Legislation § 605. Enacted February 14, 1872; based on Field Draft, § 709, N. Y. Pen. Code, § 639; Stats. 1857, p. 171, § 2.

#### Destroying or injuring jails.

§ 606. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the state prison not exceeding five years.

Legislation § 606. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 247, § 141, which read: "§ 141. If any person shall willfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the state prison for any term not exceeding five years."

Citations. Cal. 68/485; 139/212, 213.

#### Destroying or injuring bridges, dams, levees, etc.

§ 607. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or sea-walls, or any dock, quay, or jetty, lock, or sea-wall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing



such soil within twenty-four hours from such watercourse or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding two years, or by both; provided, that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining.

**Legislation § 607.** 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 639); based on Orimes and Punishment Act, § 140, as amended by Stats. 1863, p. 58, § 1, which read: "Section 140. Every person who shall willfully and maliciously cut, break, injure, or destroy, any bridge, mill, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed, tide, or marsh land, or to conduct water for mining, manufacturing, reclaiming, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully and maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment at hard labor in the state prison not more than two years, or both such fine and imprisonment." When enacted in 1872, § 607 differed from the amendment of 1880 (the present section), (1) not having (a) the words "store or" before "conduct water for mining," nor (b) "or for the supply of the inhabitants of any city or town," after "agricultural purposes"; (2) having the words "and used for securing any sea-bank" instead of "for the purpose of securing any sea-bank"; (3) the section reading, after "jetty, lock, or sea-wall," "is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding two years, or by both," the clauses beginning "or who, between the first day of October" being added in 1880. 2. Amended by Code Amdts. 1880, p. 36.

**Malicious injuries to bridges:** See ante, §§ 587, 588.

**Taking water from or obstructing canal, flume, etc.:** See ante, § 592.

#### **Burning or injuring rafts.**

§ 608. Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber,

... or cuts loose or sets adrift any such raft or part thereof, the property of another, is guilty of a misdemeanor.

**Legislation § 606.** 1 Enacted February 14, 1872; based on Crimes and Punishments Act, Stats. 1850, p. 246, § 139 (the code commissioners erroneously quoted it as the base; § 141 is quoted ante, Legislation § 606), which read: "Every person who shall willfully and maliciously burn, injure, or destroy any pier or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water-craft being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding six months." When enacted in 1872, § 608 read: "Every person who willfully and maliciously burns, injures, or destroys any pier or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months." 2 Amended by Stats. 1907, p. 853. See infra, §§ 608a, 608b, 608c.

**Citations.** Cal. 57 125.

**Protection of lumber manufacturers:** See ante, § 593a.

#### Setting vessels adrift.

**§ 608a.** Every person who willfully and maliciously cuts, breaks, injures, sinks, or sets adrift any vessel of less than ten gross tons, the property of another, is guilty of a misdemeanor.

**Legislation § 608a.** Added by Stats. 1907, p. 854. See supra, Legislation § 608.

#### Injuring vessels.

**§ 608b.** Every person who willfully and maliciously cuts, breaks, or injures any vessel of ten gross tons and upwards, the property of another, is guilty of a misdemeanor.

**Legislation § 608b.** Added by Stats. 1907, p. 854. See ante, Legislation § 608.

#### Sinking vessels a felony.

**§ 608c.** Every person who willfully and maliciously sinks or sets adrift any vessel of ten gross tons and upwards, the property of another, is guilty of a felony.

**Legislation § 608c.** Added by Stats. 1907, p. 854. See ante, Legislation § 608.

**Damages, etc., to buoy or beacon.**

§ 609. Any person who willfully removes, damages, or destroys any buoy or beacon placed in any waters within this state by lawful authority, is guilty of a misdemeanor.

**Legislation § 609.** 1. Enacted February 14, 1872 (based on Field Draft, § 713, N. Y. Pen. Code, § 689), and then read: "Every person who willfully removes any buoy or beacon, placed in any waters within this state by lawful authority, is guilty of a misdemeanor." 2. Amendment by Stats. 1901, p. 475; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 689; the code commissioner saying, "The amendment incorporates the provisions of the statute of 1873-74, p. 619, for the protection of buoys and beacons."

**Masking or removing signal lights, or exhibiting false lights.**

§ 610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the state prison not less than three nor more than ten years.

**Legislation § 610.** Enacted February 14, 1872; based on Field Draft, § 714, N. Y. Pen. Code, § 688.

**Obstructing navigable streams.**

§ 611. Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

**Legislation § 611.** Enacted February 14, 1872 (N. Y. Pen. Code, § 385); based on Crimes and Punishment Act, Stats. 1850, p. 188, § 1.

**Depositing sawdust, etc., in Humboldt Bay.**

§ 612. Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs, or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the board of supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

**Legislation § 612.** Enacted February 14, 1872; based on Stats. 1857, p. 66, §§ 1, 2.

**Throwing overboard ballast, or otherwise obstructing the navigation of any harbor, etc.**

§ 613. Every person who, within the anchorage of any port, harbor, or cove of this state, into which vessels may enter for the pur-

pose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor.

Legislation § 613. Enacted February 14, 1872 (N. Y. Pen. Code, § 444); based on Stats. 1861, p. 224, § 3; Stats. 1863-64, p. 138.

#### **Mooring vessels to buoys.**

§ 614. Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this state, is guilty of a misdemeanor.

Legislation § 614. Enacted February 14, 1872; based on Stats. 1861, p. 224, § 2.

Act for protection of buoys and beacons: See post, Appendix, tit. "Buoys and Beacons."

#### **Injuries to signals, monuments, etc., erected in United States coast survey.**

§ 615. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected or used by persons engaged in the United States coast survey, is guilty of a misdemeanor.

Legislation § 615. Enacted February 14, 1872; based on Stats. 1852, p. 148, § 6.

#### **Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.**

§ 616. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification set up at any place in this state, by authority of any law of the United States or of this state, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

Legislation § 616. Enacted February 14, 1872; based on Rep. Cod. Laws Cal. 1868 (Crimes and Punishment Act), § 161.

**Injuring or destroying written instrument.**

§ 617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the state prison for not less than one nor more than five years.

**Legislation § 617.** Enacted February 14, 1872; based on Field Draft, § 715, N. Y. Pen. Code, § 94; Crimes and Punishment Act, Stats. 1850, p. 286, § 68.

**Opening or publishing sealed letters.**

§ 618. Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

**Legislation § 618.** Enacted February 14, 1872 (Field Draft, § 717, N. Y. Pen. Code, § 642); based on Crimes and Punishment Act, Stats. 1850, p. 243, § 111, which read: "§ 111. Every person who shall willfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it shall be addressed; and every person who shall maliciously publish the whole or any part of such letter without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding one thousand dollars."

**Citations.** App. 1/188.

**Disclosing contents of telegraphic or telephonic messages.**

§ 619. Every person who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

**Legislation § 619.** 1. Enacted February 14, 1872 (Field Draft, § 718, N. Y. Pen. Code, § 642); based on Stats. 1862, p. 289, §§ 1-5. 2. Amended by Code Amdts. 1880, p. 88, adding "unless directed so to do by the law-

ful order of a court" after "without the permission of such person."  
3. Amendment by Stats. 1901, p. 475; unconstitutional: See note, § 5, ante.  
4. Amended by Stats. 1905, p. 690, adding "or telephonic" after "telegraphic."

Disclosing contents of message: See post, § 640.

#### **Altering telegraphic or telephonic messages.**

§ 620. Every person who willfully alters the purport, effect, or meaning of a telegraphic or telephonic message to the injury of another, is punishable as provided in the preceding section.

Legislation § 620. 1. Enacted February 14, 1872; based on Stats. 1862, p. 288, § 1. 2. Amendment by Stats. 1901, p. 475; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 690, adding "or telephonic" after "telegraphic."

#### **Opening telegraphic or telephonic messages.**

§ 621. Every person not connected with any telegraph or telephone office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic or telephonic message, addressed to another person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic or telephonic message addressed to such other person, with the intent to use, destroy, or detain the same from the person entitled to receive such message, is punishable as provided in section six hundred and nineteen.

Legislation § 621. 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 642); based on Stats. 1862, p. 289, § 5. 2. Amendment by Stats. 1901, p. 475; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 690, (1) adding (a) "or telephone" after "telegraph," and (b) "or telephonic" after "telegraphic" in both instances; (2) changing "any other person" to "another person," in both instances; (3) omitting (a) "and" before "addressed to" in first instance, and (b) "or persons" after "from the person."

#### **Injuring works of art or improvements in any city, town, or village.**

§ 622. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade-tree or ornamental plant growing therein, whether

situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

**Legislation § 622.** Enacted February 14, 1872; based on Field Draft, § 720, N. Y. Pen. Code, § 647.

**Mutilation of books, etc., in public libraries and museums.**

§ 623. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of a misdemeanor.

**Legislation § 623.** 1. Enacted February 14, 1872; based on Field Draft, § 721, N. Y. Pen. Code, § 648. 2. Amended by Stats. 1901, p. 99, (1) omitting "or" before "mechanics," and (2) changing "felony" to "a misdemeanor" at end of section.

**Willful detention of library books.**

§ 623½. Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such article or other property may be kept, is guilty of a misdemeanor and shall be punished accordingly.

**Legislation § 623½.** Added by Stats. 1899, p. 97; becoming a law, under constitutional provision, without governor's approval.

**Breaking or obstructing gas or water pipes, etc.**

§ 624. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

**Legislation § 624.** Enacted February 14, 1872; based on Field Draft, § 625, N. Y. Pen. Code, § 639; Stats. 1861, p. 538, §§ 1, 2.

**Drawing water from works after they have been closed.**

§ 625. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stop-cock or faucet

by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

**Legislation § 625.** Enacted February 14, 1872; based on Stats. 1861, p. 533, § 3.

**Citations.** Cal. 77/32.

**Unlawful interferences with fire-alarm apparatus. Penalty.**

§ 625a. Any person who willfully and maliciously tampers with, molests, injures, or breaks any public fire-alarm apparatus, wire, or signal, or willfully and maliciously sends, gives, transmits, or sounds any false alarm of fire, by means of any public fire-alarm system or signal, is punishable by imprisonment in the county jail, not exceeding one year, or by a fine, not exceeding one thousand dollars, or by both such fine and imprisonment.

**Legislation § 625a.** Added by Stats. 1903, p. 137.



## TITLE XV.

## Miscellaneous Crimes.

Chapter I. Violation of the Laws for the Preservation of Game and Fish. §§ 626-637f.

II. Other and Miscellaneous Offenses. §§ 638-654.

## CHAPTER I.

## Violation of the Laws for the Preservation of Game and Fish.

- § 626. Protection of game. Duck. Shore-birds. Quail. Wilson snipe. Grouse.
- § 626a. Doves.
- § 626b. Nests or eggs.
- § 626c. Imported birds.
- § 626d. Bag limit.
- § 626e. Female deer, spotted fawn, antelope, etc.
- § 626f. Protection of male deer.
- § 626g. Tree-squirrel.
- § 626h. Sale or possession of deer-pelts.
- § 626i. Limit of deer that may be killed.
- § 626j. Tracking deer with dogs.
- § 626k. Certain game not to be sold.
- § 626l. Live birds and animals for certain purposes.
- § 626m. Close hours.
- § 626n. Use of animals as blinds.
- § 626o. Shooting from moving boats.
- § 627. Trespass upon inclosed or cultivated grounds a misdemeanor.
- § 627a. Certain game not to be shipped.
- § 627b. Shipments, limit of certain game.
- § 627c. Protection to song-birds and their nests. [Repealed.]
- § 627d. Penalties. [Repealed.]
- § 628. Protection of fish. Shrimps. Catfish. Sturgeon. Shell-fish. Lobsters.
- § 628a. Striped bass. Export of bass. Penalty.
- § 628b. Black bass. Limit of catch.
- § 628c. Young fish of any species. Fish in pond or reservoir belonging to state. Penalty.
- § 628d. Fine or imprisonment. Disposition of fines.
- § 628e. Surf-fish, protection of.
- § 629. Screen over mill-race, pipe, etc. Penalty. Disposition of fines.
- § 630. Use of phosphorus on land in certain counties prohibited. [Repealed.]
- § 631. Net, pound, cage, trap, etc., not to be used.
- § 631a. Penalty for violation.

- § 631b. Disposition of money from fines. Game-preservation fund.  
 § 631c. Penalty for violation.  
 § 632. Trout. Limit of catch. Penalty. Disposition of fines.  
 § 632½. Steelhead-trout. Limit of catch. Export of trout. Penalty. Propagation.  
 § 632a. Shipment of trout. Penalty. Disposition of fines.  
 § 632b. Sacramento perch.  
 § 632b. Salmon or steelhead roe as bait prohibited.  
 § 633. Golden trout, protection of. Penalty.  
 § 634. Fresh salmon. Nets and seines. Penalty. Limits of tide water.  
 § 635. Use of explosives and pollution of waters.  
 § 636. Use of seines and set-nets. Penalty.  
 § 636a. Nets, seines, etc., prohibited.  
 § 637. Fish commissioners to examine dams. Fishways to be constructed. Penalty.  
 § 637a. Protection of wild birds. Game-birds enumerated.  
 § 637b. Application of prohibition.  
 § 637c. Seals in Santa Barbara Channel, protection of.  
 § 637d. Transportation of non-game birds.  
 § 637e. Certificates giving right to take birds.  
 § 637f. Protection of nests.

**Protection of game. Duck. Shore-birds. Quail. Wilson snipe. Grouse.**

§ 626. Every person who, between the fifteenth day of February and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession any kind of wild duck, black sea-brant, or any rail, curlew, ibis, plover, or other shore-birds (*Limicolæ*) or who, between the first day of February and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any desert or valley quail; or who, between the first day of April and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who, at any time prior to the first day of September one thousand nine hundred and eleven, hunts, pursues, takes, kills, or destroys, or has in his possession, any mountain-quail, grouse or sagehen, is guilty of a misdemeanor.

**Legislation § 626.** 1. Enacted February 14, 1872 (based on Stats. 1869-70, p. 853, § 1; Stats. 1871-72, p. 102), and then read: "Every person who, in the counties of San Bernardino or Los Angeles, between the first day of August of any year and the first day of April of the next year, or who in any other of the counties of this state, except the counties of Lassen, Plumas, and Sierra, between the fifteenth day of March and the fifteenth day of September

in each year, takes, kills, or destroys quail, partridges, or grouse, mallard, wood, teal, spoonbill, or any kind of broadbill ducks, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1875-76, p. 113, to read: "Every person who, in the counties of San Bernardino or Los Angeles, between the first day of April of any year and the first day of August of the same year, or who in any other of the counties of this state, except the counties of Lassen, Plumas, and Sierra, between the fifteenth day of March and the fifteenth day of September in each year, takes, kills, or destroys quail, partridge, or grouse, mallard, wood, teal, spoonbill, or any kind of broadbill ducks, is guilty of a misdemeanor." 3. Amended by Code Amdts. 1877-78, p. 119, to read: "Every person who, in the counties of San Bernardino or Los Angeles, between the first day of April of any year, and the first day of August of the same year, or who, in any other of the counties of this state, except the counties of Lassen, Plumas, and Sierra, between the fifteenth day of March and the fifteenth day of September in each year, hunts, pursues, takes, kills, or destroys quail, partridge, or grouse, mallard, wood, or summer duck, redhead, gadwell, or gray duck, or blue-winged teal, is guilty of a misdemeanor. Every person who, in the county of San Joaquin, between the first day of January and the first day of July in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, at any time, takes, gathers, or destroys the eggs of any mallard, wood, or summer duck, redhead, teal, gadwell, or gray duck, or any other species of wild duck, is guilty of a misdemeanor. Every person who shall have any of the aforesaid game in his possession at a time when it is unlawful to kill the same is guilty of a misdemeanor." 4. Amended by Code Amdts. 1880, p. 41, to read: "Every person who, in any of the counties of this state, between the fifteenth day of March and the fifteenth day of September, in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or any kind of duck, or rail, or marsh-hens, is guilty of a misdemeanor. Every person who, in the state of California, between the first day of January and the first day of July, in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, at any time, takes, gathers or destroys the eggs of any mallard, wood, or summer-duck, redhead, teal, gadwell, or gray duck, or any other species of wild duck, is guilty of a misdemeanor. Every person who shall have any of the aforesaid game, or any male deer or buck, or any female deer or doe, or any antelope, elk, or mountain-sheep in his possession at a time when it is unlawful to kill the same, as provided by this section, or by section six hundred and twenty-eight of this code, is guilty of a misdemeanor, and proof of the possession of any of the aforesaid game at a time when it is unlawful to kill the same within the county wherein the same is found, shall be prima facie evidence, in any prosecution for a violation for any of the provisions of this section, that the person or persons in whose possession the same is found, took, killed, or destroyed the same in the county wherein the same is found, during the period when it was unlawful to take, kill, or destroy the same." 5. Amended by Stats. 1883, p. 80, to read: "Every person, who, in the state of California, between the first day of March and the first day of October in each year, hunts, pursues, takes, kills, or de-

troys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this state, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse, is guilty of a misdemeanor. Every person who, in this state, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, between the first day of November in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male deer or buck, is guilty of a misdemeanor. Any person in the state of California, who has in his possession any hides or skins of any deer, elk, antelope, or mountain-sheep, killed between the first day of November and the first day of July, is guilty of a misdemeanor. Every person who shall at any time in the state of California hunt, pursue, take, kill, or destroy any antelope, elk, mountain-sheep, female deer, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section at any time, unless the carcass of such animal is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport, or have in his possession any deer from which evidence of sex has been removed, or any of the aforesaid game at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor." 6. Amended by Stats. 1887, p. 286, to read: "Every person who, in the state of California, between the first day of March and the tenth day of September, in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this state, at any time, takes, gathers, or destroys the eggs of any quail, partridge, or grouse, is guilty of a misdemeanor. Every person who, in this state, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, between the fifteenth day of December in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male antelope, deer, or buck, is guilty of a misdemeanor. Every person in the state of California who has in his possession any hides or any skins of deer, elk, antelope, or mountain-sheep, killed between the fifteenth day of December, and the first day of July, is guilty of a misdemeanor. Every person who shall at any time, in the state of California, hunt, pursue, take, kill, or destroy any female antelope, elk, mountain-sheep, female deer, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section, at any time, unless the carcass of such animal is used or presented by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer or expose for sale, transport or have in his possession any deer, or deer skin or hide, from which evidence of sex has been removed, or any of the aforesaid game at a time

when it is unlawful to kill the same, provided by this and subsequent sections, is guilty of a misdemeanor." 7. Amended by Stats. 1891, p. 472, to read: "Every person who, in the state of California, between the first day of March and the first day of October, in each year, hunts, pursues, takes, kills, or destroys any quail, partridge, or grouse, or any kind of wild duck or rail, is guilty of a misdemeanor. Every person who, in any of the counties of the state of California, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse; or mallard duck, or any kind of summer-duck, redhead, teal, or any gray duck, or any other kind of wild duck, is guilty of a misdemeanor. Every person who, in the state of California, between the first day of January and the first day of July in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, in any of the counties of the state of California, hunts, pursues, takes, kills, or destroys any male deer, antelope, mountain-sheep, or buck for the period of two years from the date of the passage of this act, is guilty of a misdemeanor. Every person in the state of California who has in his possession any green hides or any green skins of any deer, elk, antelope, or mountain-sheep, killed after the passage of this act, and before the expiration of two years from the date of the passage of this act, is guilty of a misdemeanor. Every person in the state of California who, at any time hunts, pursues, kills, takes, or destroys any female deer, antelope, elk, mountain-sheep, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals or birds mentioned in this section at any time, unless the carcass of such animal or bird is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport, or carry, or have in his possession, any deer or deerskin; or any hide, or pelt, from which the evidence of sex has been removed, or any of the aforesaid game, at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor. Any person found guilty of violating any of the provisions of this act shall, upon conviction, be fined in a sum not less than one hundred (100) dollars, or by imprisonment in the county jail in the county in which the conviction was had not less than one hundred days, or by both such fine and imprisonment. One half of all moneys collected for fines for violations of the provisions of this section shall be paid to the informer, one quarter to the district attorney of the county in which the conviction is had, and one quarter shall be paid into the fish commission fund for the purchase and distribution of game-birds in the various counties of the state of California." 8. Amended by Stats. 1893, p. 278, to read: "Every person who, in the state of California, between the first day of March, and the first day of September in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, dead or alive, except for purposes of propagation, any quail, bob-white, partridge, or grouse, or any kind of wild duck, snipe, or rail, shall be guilty of a misdemeanor. Every person who, in the

stroys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this state, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse, is guilty of a misdemeanor. Every person who, in this state, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, between the first day of November in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male deer or buck, is guilty of a misdemeanor. Any person in the state of California, who has in his possession any hides or skins of any deer, elk, antelope, or mountain-sheep, killed between the first day of November and the first day of July, is guilty of a misdemeanor. Every person who shall at any time in the state of California hunt, pursue, take, kill, or destroy any antelope, elk, mountain-sheep, female deer, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section at any time, unless the carcass of such animal is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport, or have in his possession any deer from which evidence of sex has been removed, or any of the aforesaid game at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor." 6. Amended by Stats. 1887, p. 286, to read: "Every person who, in the state of California, between the first day of March and the tenth day of September, in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this state, at any time, takes, gathers, or destroys the eggs of any quail, partridge, or grouse, is guilty of a misdemeanor. Every person who, in this state, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, between the fifteenth day of December in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male antelope, deer, or buck, is guilty of a misdemeanor. Every person in the state of California who has in his possession any hides or any skins of deer, elk, antelope, or mountain-sheep, killed between the fifteenth day of December, and the first day of July, is guilty of a misdemeanor. Every person who shall at any time, in the state of California, hunt, pursue, take, kill, or destroy any female antelope, elk, mountain-sheep, female deer, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section, at any time, unless the carcass of such animal is used or presented by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer or expose for sale, transport or have in his possession any deer, or deer skin or hide, from which evidence of sex has been removed, or any of the aforesaid game at a time

when it is unlawful to kill the same, provided by this and subsequent sections, is guilty of a misdemeanor." 7. Amended by Stats. 1891, p. 472, to read: "Every person who, in the state of California, between the first day of March and the first day of October, in each year, hunts, pursues, takes, kills, or destroys any quail, partridge, or grouse, or any kind of wild duck or rail, is guilty of a misdemeanor. Every person who, in any of the counties of the state of California, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse, or mallard duck, or any kind of summer-duck, redhead, teal, or any gray duck, or any other kind of wild duck, is guilty of a misdemeanor. Every person who, in the state of California, between the first day of January and the first day of July in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, in any of the counties of the state of California, hunts, pursues, takes, kills, or destroys any male deer, antelope, mountain-sheep, or buck for the period of two years from the date of the passage of this act, is guilty of a misdemeanor. Every person in the state of California who has in his possession any green hides or any green skins of any deer, elk, antelope, or mountain-sheep, killed after the passage of this act, and before the expiration of two years from the date of the passage of this act, is guilty of a misdemeanor. Every person in the state of California who, at any time hunts, pursues, kills, takes, or destroys any female deer, antelope, elk, mountain-sheep, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals or birds mentioned in this section at any time, unless the carcass of such animal or bird is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport, or carry, or have in his possession, any deer or deerskin; or any hide, or pelt, from which the evidence of sex has been removed, or any of the aforesaid game, at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor. Any person found guilty of violating any of the provisions of this act shall, upon conviction, be fined in a sum not less than one hundred (100) dollars, or by imprisonment in the county jail in the county in which the conviction was had not less than one hundred days, or by both such fine and imprisonment. One half of all moneys collected for fines for violations of the provisions of this section shall be paid to the informer, one quarter to the district attorney of the county in which the conviction is had, and one quarter shall be paid into the fish commission fund for the purchase and distribution of game-birds in the various counties of the state of California." 8. Amended by Stats. 1893, p. 278, to read: "Every person who, in the state of California, between the first day of March, and the first day of September in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, dead or alive, except for purposes of propagation, any quail, bob-white, partridge, or grouse, or any kind of wild duck, snipe, or rail, shall be guilty of a misdemeanor. Every person who, in the Pen. Code—20

state of California, shall take, gather, or destroy the eggs of any quail, bob-white, partridge, pheasant, grouse, or dove, or any kind of wild duck, shall be guilty of a misdemeanor. Every person who, in the state of California, between the first day of March and the first day of August, in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, doves, shall be guilty of a misdemeanor. Every person who, in the state of California, shall, within the two years next (except from September first to October fifteenth in each year) after the passage of this act, hunt, pursue, take, kill, or destroy any male deer, elk, antelope, mountain-sheep, or buck, shall be guilty of a misdemeanor. Every person who, in the state of California, shall at any time hunt, pursue, kill, take, or destroy any female deer, antelope, elk, mountain-sheep, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, shall be guilty of a misdemeanor. Every person who shall take, kill, or destroy, at any time, any bird mentioned in this section, unless the carcass of such bird is used or preserved by the person so taking or slaying it, or is sold for food, shall be guilty of a misdemeanor. Every person in the state of California who shall at any time sell, or offer for sale, the hide or meat of any deer, elk, antelope, or mountain-sheep, shall be guilty of a misdemeanor. Every person who shall buy, sell, offer, or expose for sale, transport or carry, or have in his possession, any deer or deerskin, or any deer hide or pelt from which the evidence of sex has been removed, or any of the aforesaid game at a time when it is unlawful to kill the same, shall be guilty of a misdemeanor. Every person who, in the state of California, shall, within the two years next after the passage of this act, hunt, pursue, take, kill, or destroy, or have in his possession, except for purposes of propagation, any pheasant, shall be guilty of a misdemeanor. Every person who shall at any time net or pound any quail, partridge, or grouse, and every person who shall sell, transport, or give away, or offer or expose for sale, or have in his possession, any quail, partridge, or grouse that has been snared, captured, or taken in or by any means of any net or pound, is guilty of a misdemeanor. Proof of possession of any quail, partridge, or grouse which shall not show evidence of having been taken by means other than a net or pound, shall be "prima facie" evidence, in any prosecution for violation of the provisions of this section, that the person in whose possession such quail, partridge, or grouse is found, took, killed, or destroyed the same by means of a net or pound. Every cold-storage company, person keeping a cold-storage warehouse, tavern or hotel keeper, restaurant or eating-house keeper, marketman, or other person who shall sell, expose, or offer for sale, or give away, or have in his possession in this state any deer, quail, bob-white, partridge, pheasant, grouse, dove, or wild duck during the time it shall be unlawful to kill such animal or bird, shall be guilty of a misdemeanor. Every person who shall use a shotgun of a larger caliber than that commonly known and designated as number ten gauge, for the purpose of killing or destroying any wild duck, rail, quail, partridge, pheasant, or grouse, shall be guilty of a misdemeanor. Every person who, upon any inclosed or cultivated grounds which are private property, and where signs are displayed forbidding such shooting, shall shoot any quail, bob-white, pheasant,



partridge, grouse, dove, or wild duck, without permission first obtained from the owner or person in possession of such grounds, shall be guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than ten days, or be punished by both such fine and imprisonment. One half of all moneys collected for fines for violations of this section shall be paid to the informer, one quarter to the district attorney of the county, and one quarter shall be paid into the fish commission fund for the purchase and distribution of game-birds in the various counties of the state."

9. Amended by Stats. 1895, p. 256, to read: "Every person who, in the state of California, between the fifteenth day of February and the fifteenth day of October in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, whether taken in the state of California, or shipped into the state from any other state, territory, or foreign country, except for purposes of propagation, any valley-quail, bob-white, partridge, robin, or any kind of wild duck or rail, shall be guilty of a misdemeanor; provided, that the right to have in possession for the purposes of propagation shall first be obtained, by permit, in writing, from the game-warden of the county wherein said birds are to be caught." 10. Amended by Stats. 1897, p. 90, to read: "Every person who, between the first day of March and the first day of October in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, any valley-quail, bob-white, partridge, or any kind of wild duck or rail; every person who, between the fifteenth day of February and the first day of September in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, any mountain-quail or grouse; every person who, between the fifteenth day of February and the fifteenth day of July in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, any dove or doves; every person who shall take, gather, or destroy the eggs or nest of any quail, bob-white, partridge, pheasant, grouse, dove, robin, or any kind of wild duck or rail; every person who, in the state of California, shall at any time hunt, shoot, shoot at, take, kill, or destroy, buy, sell, give away, or have in his possession, except for the purpose of propagation, or for educational or scientific purposes, any English skylark, robin, canary, humming-bird, thrush, or mocking-bird, or any part of the skin, skins, or plumage thereof, or who shall rob the nests or take or destroy, or offer for sale, the eggs of any of the said birds; every person who, before the first day of March, eighteen hundred and ninety-nine, shall hunt, pursue, take, kill, or destroy, or have in his possession, any pheasant; every cold-storage company, person keeping a cold-storage warehouse, tavern or hotel keeper, restaurant or eating-house keeper, marketman, or other person, who shall buy, sell, expose or offer for sale, or give away, or have in his possession, any quail, bob-white, partridge, robin, grouse, dove, pheasant, wild duck, or rail, during the time it shall be unlawful to kill such birds; every person who shall hunt, pursue, take, kill, or have in his possession, or destroy, any male deer between the fifteenth day of October and the fifteenth day of July of the following year; every person who shall at any time hunt, pursue, take, kill, or

destroy, or have in his possession, any female deer, or spotted fawn, or any antelope, elk, or mountain-sheep; every person who shall at any time buy, sell, or offer for sale, the hide or meat of any deer, elk, antelope, or mountain-sheep; every person who shall buy, sell, offer, or expose for sale, transport or carry, or have in his possession, the skin, hide, or pelt of any deer from which the evidence of sex has been removed, is guilty of a misdemeanor; provided, however, that the right of possession for the purpose of propagation shall first be obtained by a permit in writing, from the board of fish commissioners of the state of California. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than twenty dollars or more than five hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or more than one hundred and fifty days, or be punished by both such fine and imprisonment. It shall be no defense in a prosecution for a violation of any of the provisions of this section that the birds or animals were taken or killed outside this state; provided, however, that nothing in this section shall be held to apply to the hide of any of said animals taken or killed in Alaska or any foreign country." 11. Amended by Stats. 1901, p. 819, to read: "Every person who, between the first day of February and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, any quail, partridge, grouse, or sage-hen, or any kind of wild duck, or any rail, or any curlew, ibis, or plover, is guilty of a misdemeanor." 12. Amended by Stats. 1908, p. 2, to read: "Every person who between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory or foreign country, any valley-quail, or partridge, or any kind of wild duck, or any rail, or any curlew, ibis or plover; or who between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory or foreign country, any mountain-quail, grouse, or sage-hen is guilty of a misdemeanor." 13. Amended by Stats. 1905, p. 255, to read: "Every person, who, between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed, in the state of California, or shipped into the state from any other state, territory, or foreign country, any valley-quail, or partridge, or any kind of wild duck, or any rail, or any curlew, ibis, plover, or other shore-birds (Limicolæ); or who, between the first day of April and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, any

mountain-quail, grouse, or sage-hen, is guilty of a misdemeanor." 14. Amended by Stats. 1907, p. 760, to read: "Every person who, between the fifteenth day of February and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession any kind of wild duck; or who between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any valley-quail, or partridge, or any rail, or any curlew, ibis, plover, or other shore-birds (*Limicolæ*); or who, between the first day of April and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who, between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills, destroys, or has in his possession, any mountain-quail; or who, at any time prior to the first day of September, one thousand nine hundred and nine, hunts, pursues, takes, kills, or destroys, or has in his possession, any grouse or sage-hen, is guilty of a misdemeanor." 15. Amended by Stats. 1909, p. 670.

Citations. Cal. 108/479; 186/528.

Acts for the protection of game: See post, Appendix, tit. "Game Laws."

#### Doves.

§ 626a. Every person who, between the fifteenth day of October of any year and the fifteenth day of July of the following year, hunts, pursues, takes, kills or destroys, or has in his possession, any dove, is guilty of a misdemeanor.

Legislation § 626a. 1. Added by Stats. 1895, p. 256, as § 626b, and then read: "626b. Every person who, in the state of California, between the fifteenth day of February and the first day of July in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession any dove or doves, shall be guilty of a misdemeanor." 2. Repealed by Stats. 1897, p. 92; the subject-matter of the section forming a clause of § 626 as amended at that session; q.v., ante, Legislation § 626. 3. Re-enacted by Stats. 1901, p. 819, as § 626a, and then read: "626a. Every person who, between the first day of February and the first day of August of the same year, hunts, pursues, takes, kills, or destroys, or has in his possession any dove, is guilty of a misdemeanor." 4. Amended by Stats. 1903, p. 2, to read: "626a. Every person who, between the fifteenth day of February and the first day of July of the same year, hunts, pursues, takes, kills or destroys, or has in his possession, any dove, is guilty of a misdemeanor." 5. Amended by Stats. 1907, p. 761. For original § 626b, added in 1895, see post, Legislation § 626b.

#### Nests or eggs.

§ 626b. Every person who destroys or has in his possession the nest or eggs of any of the birds mentioned in this chapter, is guilty of a misdemeanor.

Legislation § 626b. 1. Added by Stats. 1895, p. 256, as the last sentence of § 626a, the latter section reading, "626a. Every person who, in the state of California, between the fifteenth day of February and the fifteenth day of August in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, except for purposes of propagation, any mountain-quail, or grouse, shall be guilty of a misdemeanor; provided, that the right to have in possession for the purposes of propagation shall first be obtained, by permit, in writing, from the game-warden of the county wherein said birds are to be caught. Every person who, in the state of California, shall take, gather, or destroy the eggs of any quail, bob-white, partridge, pheasant, grouse, dove, or robin, or any kind of wild duck, shall be guilty of a misdemeanor." 2. Repealed by Stats. 1897, p. 92; the subject-matter of the section forming a clause of § 626 as amended at that session; q.v., ante, Legislation § 626. 3. Re-enacted by Stats. 1901, p. 819, as § 626b. For the original § 626b, added in 1895, see supra, § 626a.

#### Imported birds.

§ 626c. Every person who takes, kills, or destroys, or has in his possession any swan, or any wild pheasants, or any bob-white quail, or any variety of imported quail or partridge, or wild turkey, is guilty of a misdemeanor.

Legislation § 626c. 1. Added by Stats. 1901, p. 819, and then read: "626c. Every person who takes, kills, or destroys, or has in his possession any Mongolian or English pheasant, or any bob-white, or Eastern or Chinese quail, or English partridge, is guilty of a misdemeanor." 2. Amended by Stats. 1905, p. 256, to read: "626c. Every person who takes, kills, or destroys, or has in his possession any swan, or any pheasant, or any bob-white quail, or any variety of imported quail or partridge, is guilty of a misdemeanor." For the original § 626c, added in 1895, see post, Legislation § 626f. 3. Amended by Stats. 1909, p. 670.

#### Bag limit.

§ 626d. Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five wild ducks, or black sea-brant, or more than twenty quail, snipe, curlew, ibis, plover, rail, or any other shore-birds (Limicolæ), or more than twenty doves, is guilty of a misdemeanor.

Legislation § 626d. 1. Added by Stats. 1901, p. 620, and then read: "626d. Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five quail, partridge, snipe, curlew, or ibis, or more than fifty doves, or more than fifty ducks, or more than twenty rails, is guilty of a misdemeanor." 2. Amended by Stats. 1905,

p. 256, to read: " 626d. Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five quail, partridge, doves, snipe, curlew, ibis, plover, rail, or any other shore-birds, (Limicolis), or more than fifty wild ducks, is guilty of a misdemeanor." 3. Amended by Stats. 1907, p. 761, substituting "thirty-five wild ducks" for "fifty wild ducks." 4. Amended by Stats. 1909, p. 670. For the original § 626d, added in 1895, see *infra*, Legislation § 626e.

#### Female deer, spotted fawn, antelope, etc.

§ 626e. Every person who pursues, takes, kills, or destroys, or has in his possession, any female deer or spotted fawn, or any antelope, elk, or mountain-sheep, is guilty of a misdemeanor.

Legislation § 626e. 1. Enacted February 14, 1872 (based on Stats. 1854, Bedding ed. p. 55, Kerr ed. p. 263, § 2), as § 628, which read: " 628. Every person who, between the first day of January and the first day of July in each year, takes, kills, or destroys any elk, deer, or antelope, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1875-76, p. 114, to read: " 628. Every person who, between the first day of January and the first day of September in each year, takes, kills, or destroys any elk, deer, mountain-sheep, or antelope, is guilty of a misdemeanor; and every person who shall take, kill, or destroy any of the animals herein mentioned at any time, unless the carcass of such animal is used or preserved by the person slaying it, or is sold for food, is guilty of a misdemeanor." 3. Amended by Code Amdts. 1877-78, p. 120, to read: " 628. Every person who, between the first day of November in each year, and the first day of July of the following year, hunts, pursues, takes, kills, or destroys any male deer or buck, is guilty of a misdemeanor. Every person who shall, for the period of four years from and after the passage of this act, pursue, hunt, take, kill, or destroy any antelope, elk, or mountain-sheep, or female deer or doe, shall be guilty of a misdemeanor. Every person who, after the passage of this act, shall kill any spotted fawn, shall be guilty of a misdemeanor. Every person who, after the passage of this act, shall take, kill, or destroy any of the animals mentioned in this section, at any time, unless the carcass of such animal is used or preserved by the person slaying it, or is sold for food, is guilty of a misdemeanor." 4. Repealed by Stats. 1883, p. 82, the subject-matter of the section having been transferred to § 626 in 1880, forming part of that section until 1895. See *ante*, Legislation § 626. See also, *post*, Legislation § 626f, for further legislation on same subject. 5. Added by Stats. 1895, p. 256, as a new section, numbered 626d, and then read: " 626d. Every person who, in the state of California, shall at any time hunt, pursue, take, kill, or destroy any female deer, or spotted fawn, or any antelope, elk, or mountain-sheep, shall be guilty of a misdemeanor." 6. Repealed by Stats. 1897, p. 92, the subject-matter of the section forming a clause of § 626 as amended at that session; *q.v.*, *ante*, Legislation § 626. 7. Re-enacted by Stats. 1901, p. 820, as § 626e. For the original § 626e, added in 1895, see *infra*, Legislation § 626h.

**Protection of male deer.**

§ 626f. Every person who between the first day of November and the fifteenth day of July of the following year, hunts, pursues, takes, or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state, from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor.

**Legislation § 626f.** 1. Enacted February 14, 1872, as § 628; q.v., ante, Legislation § 626e, and see subsequent legislation, until added as a new section in 1895. 2. Added by Stats. 1895, p. 256, as a new section numbered § 626e, and then read: "626e. Every person who, in the state of California, shall hunt, pursue, take, kill, or destroy any male deer, between the fifteenth day of October and the fifteenth day of July of the following year, shall be guilty of a misdemeanor." 3. Repealed by Stats. 1897, p. 92; the subject-matter of the section forming a clause of § 626 as amended at that session; q.v., ante, Legislation § 626. 4. Re-enacted by Stats. 1901, p. 820, as § 626f, and then read: "626f. Every person who, between the first day of October of any year and the first day of August of the following year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, any male deer or any deer meat, is guilty of a misdemeanor." 5. Amended by Stats. 1908, p. 8, to read: "626f. Every person who between the first day of November and the fifteenth day of July of the following year, hunts, pursues, takes, kills or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor." 6. Amended by Stats. 1905, p. 256, changing (1) "November" to "October" and (2) "July" to "August." 7. Amended by Stats. 1907, p. 768, to read: "626f. Every person who, between the first day of October and the fifteenth day of July of the following year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor." 8. Amended by Stats. 1909, p. 517, (1) changing "the first day of October" to "the first day of November"; (2) omitting the word "kills" from the series "hunts, pursues, takes, kills, or destroys"; (3) the text, supra, follows that of the bill as approved by the governor March 21, 1907, although the official bound volume of the statutes of 1909 has "August" instead of "July," the error occurring through the introduction of several amendments of the section; the attorney-general, in an opinion given to the fish and game commission, July 8, 1909, saying, "The act fixing July 15th as the date of the beginning of the open season being the only act to receive executive approval, I advise you that such act is the law now in force."

**Tree-squirrel.**

**§ 626g.** Every person who, between the first day of January and the first day of September of the same year, hunts, takes, kills, or destroys, or has in his possession, any species of tree-squirrel, or who at any time buys, sells, offers for sale, or has in his possession for sale, any tree-squirrel, is guilty of a misdemeanor, and every person who takes, kills, or destroys, or has in his possession, more than twelve tree-squirrels during any one open season, is guilty of a misdemeanor.

**Legislation § 626g.** 1. Added by Stats. 1901, p. 820, and then read: "Every person who hunts, takes, kills, or destroys, or has in his possession, between the first day of February and the first day of August of any year, any species of tree-squirrel, is guilty of a misdemeanor." 2. Amended by Stats. 1905, p. 256, omitting "between the first day of February and the first day of August." 3. Amended by Stats. 1907, p. 761. The original § 626g, added in 1895, entitled "Pheasants protected for three years," was repealed in 1897, the subject-matter being amended and forming a part of § 626 as amended at that session; q.v., ante, Legislation § 626.

**Sale or possession of deer-pelts.**

**§ 626h.** Every person who buys, sells, offers or exposes for sale, barter or trade, the hide, pelt or skin of any deer, or who transports, carries, or has in his possession, the skin, pelt or hide of any female deer, or spotted fawn, or any deer hide or pelt from which the evidence of sex has been removed, is guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to the skin, pelt or hide of any deer killed or taken in a foreign country.

**Legislation § 626h.** 1. Added by Stats. 1895, p. 257, as §§ 626e, 626f, which read: "626e. Every person who, in the state of California, shall at any time buy, sell, or offer for sale the hide or meat of any deer, elk, antelope, or mountain-sheep, whether taken or killed in the state of California, or shipped into the state from any other state or territory, shall be guilty of a misdemeanor; provided, that nothing in this section shall be held to apply to the hide of any of said animals taken or killed in Alaska, or any foreign country. 626f. Every person who shall buy, sell, offer, or expose for sale, transport, or carry, or have in his possession the skin, hide, or pelt of any deer from which the evidence of sex has been removed, shall be guilty of a misdemeanor." 2. §§ 626e and 626f repealed by Stats. 1897, p. 92, the subject-matter being amended and forming a part of § 626 as amended at that session; q.v., ante, Legislation § 626. 3. §§ 626e and 626f amended and re-enacted as § 626h by Stats. 1901, p. 820, and then read: "626h. Every person who buys, sells, offers or exposes for sale, transports or carries, or has

in his possession, the skin, pelt or hide of any female deer, or spotted fawn, or any deer hide or pelt from which the evidence of sex has been removed, is guilty of a misdemeanor." 4. Amended by Stats. 1903, p. 3. The original § 626h, added by Stats. 1895, p. 257, prohibited the possession, etc., of game-birds during the close season, and was repealed by Stats. 1897, p. 92.

#### **Limit of deer that may be killed.**

§ 626i. Every person who takes, kills or destroys or has in his possession, whether taken or killed in the state of California or shipped into the state from any other state, territory, or foreign country, more than two deer during any one open season, is guilty of a misdemeanor.

Legislation § 626i. 1. Added by Stats. 1901, p. 820, and differed from the amendments of 1905 and 1907, having the words "three deer" instead of "two deer." 2. Amended by Stats. 1905, p. 256, the section reading same as the amendment of 1907, except that it had commas after the words "kills," "destroys," and "California." 3. Amended by Stats. 1907, p. 762. The original § 626i, added by Stats. 1895, p. 257, prohibited the possession, etc., of game-birds during the close season, and was repealed by Stats. 1897, p. 92.

#### **Tracking deer with dogs.**

§ 626j. Every person who, owning, controlling or having in his possession, any dog or dogs, willfully suffers, permits or allows said dog or dogs to run, track or trail any deer at any time, except a wounded deer, during the season that deer may be lawfully killed, is guilty of a misdemeanor.

Legislation § 626j. 1. Added by Stats. 1901, p. 820, and then read: "Every person who, controlling or having in his possession any deerhounds foxhounds, greyhounds, or any other kind of dog, willfully suffers, permits or allows any of said dogs to run, track, or trail any deer during the time when it is unlawful to kill the same, is guilty of a misdemeanor." 2. Amended by Stats. 1907, p. 761.

#### **Certain game not to be sold.**

§ 626k. Every person who buys, sells, offers or exposes for sale, barter or trade, any quail, partridge, dove, pheasant, grouse, sagehen, rail, ibis, plover, or any snipe or other shore-bird (*Limicolæ*), or any deer meat, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor.



**Legislation § 626k.** 1. Added by Stats. 1901, p. 820, and then read: "Every person who buys, sells, offers, or exposes for sale, barter or trade, any quail, partridge, pheasant, grouse, sage-hen, ibis, or plover, or any deer meat, whether taken or killed in the state of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor." 2. Amended by Stats. 1905, p. 256.

#### **Live birds and animals for certain purposes.**

§ 626l. Nothing in this act shall be held to prohibit the possession for scientific purposes, or the taking alive for the purpose of propagation, any of the animals or birds mentioned in this section; provided, permission to take and possess said birds or animals for said purposes shall have been first obtained in writing from the game commissioner or the state board of fish commissioners, and said permission shall accompany the shipment of said birds or animals, and shall exempt them from seizure while passing through any part of the state.

**Legislation § 626l.** Added by Stats. 1901, p. 821.

#### **Close hours.**

§ 626m. Every person who, at any time between one half hour after sunset of any day and one half hour before sunrise of the following day, hunts, pursues, takes, catches, kills or destroys any of the game birds or animals of this state; or who, between one hour after sunset of any day and one hour before sunrise of the following day takes, catches, kills or destroys any trout, or whitefish, is guilty of a misdemeanor.

**Legislation § 626m.** 1. Added by Stats. 1901, p. 821, and then read: "Every person who, at any time, between one half hour after sundown and one half hour before sunrise of the following day, hunts, pursues, takes, kills, or destroys, any of the birds mentioned in this chapter, is guilty of a misdemeanor." 2. Amended by Stats. 1909, p. 670.

#### **Use of animals as blinds.**

§ 626n. Every person who, at any time, shall use any animal as a blind, or use such animal for the purpose of approaching any wild duck, geese, curlew, ibis, plover or other water-fowl or shore-birds, for the purpose of shooting at, or killing any such water-fowl, or shore-birds, or who, at any time takes, kills, or has in his possession any such water-fowl or shore-birds, taken by any such method, is guilty of

a misdemeanor; provided however, that nothing herein contained shall prevent the use of dogs in hunting or approaching such birds.

Legislation § 626n. Added by Stats. 1909, p. 671.

#### Shooting from moving boats.

§ 626o. Every person who in the state of California, shoots at any kind of wild duck from any launch or other boat propelled by steam, gasoline, naphtha, electricity or other power, while said launch or boat is in motion, is guilty of a misdemeanor.

Legislation § 626o. Added by Stats. 1909, p. 671.

#### Trespass upon inclosed or cultivated grounds a misdemeanor.

§ 627. Every person who upon any inclosed or cultivated grounds, which is private property, and where signs are displayed not less than three to the mile, along all exterior boundaries thereof, forbidding such shooting or hunting, hunts, pursues, takes, kills, or destroys, any quail, partridge, pheasant, grouse, dove, wild duck, snipe, curlew, ibis, or plover, or any deer, without permission first obtained from the owner or person in possession of such ground, or who maliciously tears down, mutilates, or destroys any sign, sign-board, or other notice forbidding shooting on private property, is guilty of a misdemeanor.

Legislation § 627. 1. Added by Stats. 1895, p. 258, as § 627a (§ 627 as then added being an amendment of a sentence of § 626 as amended in 1893, q.v., ante, and §§ 627 and 627a being, in 1897, combined), these two sections, as added in 1895, reading, "627. Every person who shall use a shotgun of a larger caliber than that commonly known and designated as a number ten gauge, shall be guilty of a misdemeanor. The proof of the possession of said gun in the field, on marsh, bay, lake, or stream, shall be prima facie evidence of its illegal use. 627a. Every person who, upon any inclosed or cultivated grounds, which are private property, and where signs are displayed forbidding such shooting, except salt-water marsh-land, shall shoot any quail, bob-white, pheasant, partridge, grouse, dove, deer, or wild duck, without permission first obtained from the owner or person in possession of such grounds, or who shall maliciously tear down, mutilate, or destroy any sign, sign-board, or other notice forbidding shooting on private property, shall be guilty of a misdemeanor." 2. Amended by Stats. 1897, p. 92, combining §§ 627, 627a, 627b, and 627d, which sections were added in 1895, § 627 as thus amended in 1897 reading, "627. Every person who shall use a shotgun of a larger caliber than that commonly known and designated as a number ten gauge, shall be guilty of a misdemeanor. The proof of the possession of said gun in the field, or marsh, bay, lake, or stream, shall be prima facie evi-

dence of its illegal use. Every person who, upon any inclosed or cultivated grounds which are private property, and where signs are displayed forbidding such shooting, shall shoot any quail, bob-white, pheasant, partridge, grouse, dove, wild duck, or deer, without permission first obtained from the owner or person in the possession of such ground, or who shall maliciously tear down, mutilate, or destroy any sign, sign-board, or other notice forbidding shooting on private property, shall be guilty of a misdemeanor. Every railroad company, express company, transportation company, or other common carrier, their officers, agents, and servants, and every other person, who shall transport, carry, or take out of this state, or who shall receive for the purpose of transporting from the state, any deer, deerskin, buck, doe, or fawn, or any quail, partridge, pheasant, grouse, prairie-chicken, dove, or wild duck, except for purposes of propagation, or who shall transport, carry, or take from the state, or receive for the purpose of transporting from this state, any such animal or bird, shall be guilty of a misdemeanor; provided, that the right to transport for the purposes of propagation shall first be obtained by permit, in writing, from the board of fish commissioners of the state of California. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty dollars, [n]or more than five hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days, [n]or more than one hundred and fifty days, or be punished by both such fine and imprisonment."

3. Amended by Stats. 1901, p. 476; unconstitutional: See note, § 5, ante.

4. Amended by Stats. 1901, p. 821. The original code § 627, which provided for the protection of game-birds in Lassen, Plumas, and Sierra counties, was amended by Code Amdts. 1875-76, p. 113, and was repealed by Stats. 1883, p. 82.

Citations. Cal. 119/578.

#### **Certain game not to be shipped.**

§ 627a. Every railroad company, express company, transportation company, or other common carrier, its officers, agents, and servants, and every other person who transports, carries or takes out of this state, or who receives for the purpose of transporting from this state, any deer, deerskin, buck, doe or fawn, or any quail, partridge, pheasant, grouse, or sage-hen or prairie-chicken, dove, wild pigeon, or any wild duck, rail, snipe, ibis, curlew, plover, or other shore-birds (*Limicolæ*) except for the purpose of propagation or scientific purposes, under a permit, in writing, first obtained from the board of fish commissioners of the state of California, or who transport[s], carries or takes from the state, or receives for the purpose of transportation from the state, the carcass of any such animal or any such bird, or any part of the carcass of any such animal or bird, is guilty of a misdemeanor.

Legislation § 627a. 1. Added by Stats. 1895, p. 258, as § 627b, and then read same as the fourth sentence of § 627 as amended in 1897, except that it did not have the word "who" before "shall receive." See supra, Legislation § 627. 2. Repealed by Stats. 1897, p. 93, the subject-matter being incorporated with § 627 as amended at that session. 3. Re-enactment by Stats. 1901, p. 476, changing the number from § 627b to § 627a; unconstitutional: See note, § 5, ante. 4. Re-enacted by Stats. 1901, p. 821, as § 627a, and then read: "627a. Every railroad company, express company, transportation company, or other common carrier, its officers, agents and servants, and every other person who transports, carries or takes out of this state, or who receives for the purpose of transporting from the state, any deer, deerakin, buck, doe or fawn, or any quail, partridge, pheasant, grouse, prairie-chicken, dove, wild pigeon, or any wild duck, rail, snipe, ibis, curlew, or plover, except for the purposes of propagation, or who transports, carries or takes from the state, or receives for the purpose of transportation from the state, any such animal or bird, or any part of the carcass thereof, is guilty of a misdemeanor. The right to transport for the purposes of propagation, or for scientific purposes, must first be obtained by permit in writing from the game commissioner or the state board of fish commissioners." 5. Amended by Stats. 1905, p. 257. For original § 627a, added in 1895, see ante, Legislation § 627.

#### Shipments, limit of certain game.

§ 627b. Every common carrier which receives for shipment or transportation from, or which ships or transports for, any one person during any one calendar day more than twenty-five wild ducks, or black sea-brant, or more than twenty quail, snipe, curlew, ibis, plover, rail, or other shore-birds (*Limicolæ*), or more than twenty doves; or which ships or transports, or any person offering for shipment or transportation any of the said birds, or any deer, or any deer meat, in any quantity, unless such birds, or deer, or deer meat are at all times in open view and tagged or labeled with the name and residence of the person by whom they are shipped; or any person who shall at the time of such shipment or transportation fail to furnish to any such common carrier a tag or label bearing his name, residence and the exact contents of the package offered for shipment or transportation is guilty of a misdemeanor; provided, that nothing in this section contained shall be construed to permit any person to have in his possession any game or fish contrary to the provisions of this chapter, nor to permit any common carrier to have in its possession more than the above specified number of said birds during any one calendar day, though lawfully received, except during the shipment or transportation thereof.

**Legislation § 627b.** 1. Added by Stats. 1901, p. 821, and then read: "627b. Every railroad company, steamship company, express company, transportation company, transfer company, and every other person, who ships, or receives for shipment or transportation, from any one person, during any one day, more than twenty-five quail, partridge, grouse or sage-hen, snipe, curlew, or ibis, or more than fifty doves, or more than twenty rail, or more than fifty wild ducks, or who transports any of said birds or any deer, in any quantity, unless such birds or deer are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor." 2. Amended by Stats. 1905, p. 257, to read: "627b. Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day, more than twenty-five quail, partridge, pheasant, grouse, or sage-hen, doves, rail, snipe, curlew, ibis, plover or other shore-birds (Limicolæ), or more than fifty wild ducks or who transports any of the said birds, or any deer, in any quantity, unless such birds or deer are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor." 3. Amended by Stats. 1907, p. 761, to read: "627b. Every common carrier which receives for shipment or transportation from, or which ships or transports for, any one person during any one calendar day more than twenty-five quail, partridge, pheasant, grouse, sage-hen, dove, rail, snipe, curlew, ibis, plover, or other shore-birds (Limicolæ), or more than thirty-five wild ducks, or which ships or transports, or any person who offers for shipment or transportation, any of the said birds or any deer, or any deer meat, in any quantity, unless such birds or deer or deer meat are at all times in open view and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor; provided that nothing in this section contained shall be construed to permit any person to have in his possession any game or fish contrary to the provisions of this chapter, nor to permit any common carrier to have in its possession more than the above specified number of said birds during any one calendar day, though lawfully received, except during the shipment or transportation thereof." 4. Amended by Stats. 1909, p. 671. For original § 627b, added in 1895, see ante, Legislation § 627a.

**§ 627c.** [Protection to song-birds and their nests. Repealed.]

**Legislation § 627c.** 1. Added by Stats. 1895, p. 258. 2. Repealed by Stats. 1897, p. 98.

**§ 627d.** [Penalties. Repealed.]

**Legislation § 627d.** 1. Added by Stats. 1895, p. 258. 2. Repealed by Stats. 1897, p. 98.

**Protection of fish. Shrimps. Catfish. Sturgeon. Shell-fish. Lobsters.**

§ 628. Every person who between the first day of June and the first day of September, of any year, takes, catches, kills or has in his possession any shrimp; or who at any time, offers for shipment, ships, or receives for shipment or transportation from the state of California to any place in any other state, territory, or foreign country, any dried shrimp or shrimp shells of shrimp caught or taken in the waters of this state, is guilty of a misdemeanor; provided that the possession of such dried shrimp or shrimp shells shall be prima facie evidence of the fact that such dried shrimp or shrimp shells are of shrimps which were caught or taken in the waters of this state; and every person who, at any time has in his possession any dressed catfish less than eight inches in length, or who at any time kills or has in his possession any sturgeon of less than twenty-five pounds in weight, or who between the first day of November and the first day of March of the year following, buys, sells, takes, catches, kills, or has in his possession, any crab, or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any female crab, or any crabs which shall measure less than six inches across the back, or any lobster, or crawfish, or any abalones except the abalone known to commerce as the red abalone (*Haliotis rufescens*) which shall measure not less than seventeen inches around the outer edge of the shell, is guilty of a misdemeanor; provided, that it shall at all times be lawful for any person or persons, to buy, sell, or have in his possession any lobster or crawfish of not less than nine and one half inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers, caught or taken without the waters of this state, and bearing, after inspection, such evidence of having been so caught or taken as shall be hereafter prescribed by the California fish commission; and provided further, that the expense of such inspection shall be borne by the person or persons importing such lobster or crawfish.

Legislation § 628. 1. Added by Stats. 1895, p. 259, as § 628a, and then read: "628a. Every person who, in the state of California, shall take, catch, or kill, or sells, exposes or offers for sale, or has in his possession any lobster or crawfish, between the fifteenth day of May and the fifteenth day of July of each year, shall be guilty of a misdemeanor. Every person who, in the state of California, shall at any time buy, sell, barter, exchange, offer, expose for sale, or have in his possession any lobster or crawfish of less than one pound in weight, shall be guilty of a misdemeanor. It shall be no de-

fense in a prosecution for a violation of the provisions of this section that the lobsters or crawfish sold or possessed were caught outside of this state." 2. § 628a repealed by Stats. 1897, p. 848, the subject-matter being incorporated with § 628 as amended at that session. 3. § 628 amended by Stats. 1897, p. 847, combining and amending §§ 628 and 628a (added in 1895) and adding thereto, and then read: "628. Every person who takes or catches, buys, sells, or has in his possession, any striped bass of less than three pounds in weight; every person who, at any time, takes, catches, or kills any black bass, except with hook and line; every person who takes, catches, or kills, or buys, sells, exposes or offers for sale, or has in his possession, any black bass, between the first day of January and the first day of July of each year; every person who takes, catches, or kills, or buys, sells, exposes or offers for sale, or has in his possession, any lobster or crawfish, between the fifteenth day of May and the fifteenth day of July of each year; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any lobster or crawfish of less than nine and one half inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any female crab; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any sturgeon of less than three feet in length; every person who takes, catches, or kills, or buys, sells, offers or exposes to sell, or has in his possession any fresh sturgeon, between the first day of April and the first day of September of each year; every person who by seine or other means shall catch the young fish of any species, and who shall not return the same to the water immediately and alive, or who buys, sells, offers or exposes for sale, or has in his possession any such fish, fresh or dried; every person who catches, takes, or carries away any fish from any pond or reservoir belonging to or controlled by the state board of fish commissioners, or any person or corporation, without the consent of the owner thereof, which pond or reservoir has been stocked with fish; every person who shall at any time, except with hook and line, take or catch fish of any kind from any river or stream upon which a state or United States fish-hatchery is in operation, is guilty of a misdemeanor, and is punishable by a fine not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail in the county in which conviction shall be had, not less than ten days nor more than one hundred and fifty days, or by both such fine and imprisonment. All the fines imposed and collected for any violation of any of the provisions of this section shall be paid into the 'fish commission fund.' Nothing in this section shall prohibit the United States fish commission and the fish commission of this state from taking, at all times, such fish as they deem necessary for the purpose of artificial hatching. It shall be no defense in a prosecution for a violation of any of the provisions of this section that the fish were caught or taken outside or within this state." 4. Amended by Stats. 1901, p. 54 (becoming a law, under constitutional provision, without governor's approval), to read: "628. Every person who, between the thirty-first day of May and the first day of July, buys, sells, takes, catches or has in his possession, any striped bass, or who, between the first day of January and the

first day of July, buys, sells, takes, catches or has in his possession, any black bass, or, who, between the first day of April and the fifteenth day of August, buys, sells, takes, catches or has in his possession, any lobster or crawfish, or, who, between the first day of May and the first day of September, buys, sells, takes, catches, kills or has in his possession, any shrimp, or, who, at any time, buys, sells, takes, catches, kills or has in his possession, any striped bass of less than one pound in weight, or any lobster or crawfish of less than nine and one half inches in length, measured from one extremity to the other exclusive of legs, claws or feelers, or any sturgeon or any egg-bearing female lobster, or any female crab, or any abalone shells, or abalone the shell of which shall measure less than fifteen inches around the outer edge of the shell, or, who, by seine or other means, catches the young fish of any species and does not immediately return the same to the water alive, or who buys, sells, or offers for sale or has in his possession, any such fish, whether fresh or dried, or who catches, takes, kills or carries away any fish from any pond or reservoir belonging to, or controlled by, the board of fish commissioners, or any person, or corporation, without the consent of the owners thereof, which pond or reservoir has been stocked with fish, or who, except with hook and line, takes, catches or kills any black bass whatsoever, or any kind of fish, from any river or stream upon which the state or United States fish-hatchery is maintained, is guilty of a misdemeanor, and punishable by fine not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than ten nor more than one hundred and fifty days, or by both such fine and imprisonment. All fines collected for any violation of any of the provisions of this section must be paid into the 'fish commission fund.' Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such fish as they deem necessary for the purpose of artificial hatching. It is no defense in a prosecution for a violation of any of the provisions of this section that the fish were caught or taken outside, or within, this state." 5. Amended by Stats. 1903, p. 28, to read: "628. Every person who, between the first day of January and the first day of July of each year, buys, sells, takes, catches, or has in his possession any black bass; or who, between the first day of April and the fifteenth day of August of each year, buys, sells, takes, catches, or has in his possession any lobster or crawfish; or who, between the first day of May and the first day of September of each year, buys, sells, takes, catches, kills, or has in his possession any shrimp; or who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession any crab; or who, at any time buys, sells, takes, catches, kills, or has in his possession any striped bass of less than three pounds in weight, or any lobster or crawfish of less than nine and one half inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers; or any sturgeon, or any egg-bearing female lobster, or any female crab, or any crab which shall measure less than six inches across the back, or any abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell; or who, by seine or other means, catches the young fish of any species, and does not immediately



return the same to the water alive; or who buys, sells, or offers for sale, or has in his possession, any such fish, whether fresh or dried; or who catches, takes, kills, or carries away any fish from any pond or reservoir belonging to, or controlled by, the board of fish commissioners, or any person or corporation, without the consent of the owners thereof, which pond or reservoir has been stocked with fish; or who, except with hook and line, takes, catches, or kills any black bass whatsoever, or any kind of fish, from any river or stream upon which the state or United States fish-hatchery is maintained, is guilty of a misdemeanor, and punishable by a fine not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than ten nor more than one hundred and fifty days, or by both such fine and imprisonment. All fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the 'fish commission fund.' Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such fish as they deem necessary for the purpose of artificial hatching. It is no defense in a prosecution for a violation of any of the provisions of this section that the fish were caught or taken outside, or within, this state." 6. Amended by Stats. 1905, p. 186, to read: " 628. Every person who, between the first day of April and the fifteenth day of September of each year, buys, sells, takes, catches, kills or has in his possession, any lobster or crawfish; or who at any time has in his possession any lobster or crawfish of less than nine and one half inches in length, measured from one extremity to the other, exclusive of legs, claws or feelers; or who, at any time, offers for shipment, ships, or receives for shipment or transportation, from the state of California to any place in any other state, territory, or foreign country, any dried shrimp or shrimp shells; or who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession, any crab; or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any sturgeon, or any female crab, or any crab which shall measure less than six inches across the back, or any abalones or abalone shells of the kind known to commerce as the black abalone (*Haliotis californica*), the shell of which shall measure less than twelve inches around the outer edge of the shell, or any other abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell, is guilty of a misdemeanor." 7. Amended by Stats. 1907, p. 301, to read: " 628. Every person who, between the fifteenth day of February and the fifteenth day of September of each year, buys, sells, takes, catches, kills, or has in his possession, any lobster or crawfish; or who at any time has in his possession, any lobster or crawfish of less than eleven inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers; or who, at any time, offers for shipment, ships, or receives for shipment or transportation, from the state of California to any place in any other state, territory or foreign country, any dried shrimp or shrimp shells of shrimp caught or taken in the waters of this state, is guilty of a misdemeanor; provided, that the possession of such dried shrimp or shrimp shells shall be prima facie evidence of the fact that such dried shrimp or shrimp shells are of

shrimp which were caught or taken in the waters of this state; and every person who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession, any crab; or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any sturgeon, or fresh sturgeon eggs, or any female crab, or any crab which shall measure less than six inches across the back, or any abalones or abalone shells of the kind known to commerce as the black abalone (*Haliotis californica*), the shell of which shall measure less than twelve inches around the outer edge of the shell, or any other abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell; or every person who takes, catches, kills, or has in his possession, any abalones or abalone shells taken from any of the waters of this state by the use of diving-suits or diving paraphernalia of any kind, is guilty of a misdemeanor." 8. Amended by Stats. 1909, p. 519. For original code § 628, entitled "Destruction of elk, etc., when prohibited," amended in 1875-76 and in 1877-78, and repealed in 1888, see ante, Legislation § 626e. For § 628 added in 1895, entitled "Striped bass and sturgeon," see post, Legislation § 628a.

**Striped bass. Export of bass. Penalty.**

§ 628a. Every person who, at any time, buys, sells, offers for sale, or has in his possession, any striped bass of less than three pounds in weight; or who, between the first day of May and the first day of July of any year, takes, catches, or kills, any striped bass, with a net or seine; or who, between the first day of May and the first day of July of any year has in his possession any striped bass, taken, caught or killed except with hook and line; or who between the first day of May and the first day of July of any year, buys, sells or offers for sale, ships, offers for shipment, or receives for shipment or transportation any striped bass; or who, at any time, offers for shipment, ships, or receives for shipment or transportation from the state of California to any place in any other state, territory, or foreign country any striped bass of less than three pounds in weight, caught or taken in the waters of this state, is guilty of a misdemeanor; provided, that the possession of such striped bass shall be prima facie evidence of the fact that such striped bass were caught or taken in the waters of this state.

Legislation § 628a. 1. Added by Stats. 1895, p. 259, as part of § 628, which read: "628. Every person who takes or catches, buys, sells, or has in his possession any striped bass of less than three pounds in weight, is guilty of a misdemeanor. Every person who, at any time, buys, sells, offers or exposes for sale, or has in his possession any sturgeon less than three feet

in length is guilty of a misdemeanor. Every person who, at any time between the first day of April and the first day of September of each year, takes or catches, buys, sells, or has in his possession any fresh sturgeon is guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than fifty dollars or be imprisoned in the county jail in the county in which the conviction shall be had not less than fifty days, or be punished by both such fine and imprisonment. It shall be no defense in the prosecution for a violation of the provisions of this section that the sturgeon sold or possessed were caught outside of this state. Every person who, between the first day of January and the first day of July, takes or catches, buys, sells, or has in his possession any black bass is guilty of a misdemeanor." 2. §§ 628 and 628a combined, amended, and added to, forming § 628 as amended by Stats. 1897, p. 347 (q.v., ante, Legislation § 628), the subject-matter remaining a part of § 628 until 1905. 3. Added by Stats. 1905, p. 186, as a new section, and then read: "628a. Every person who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any striped bass of less than three pounds in weight, is guilty of a misdemeanor." 4. Amended by Stats. 1907, p. 302, to read: "628a. Every person who, at any time, buys, sells, offers for sale, or takes, catches, kills or has in his possession, any striped bass of less than three pounds in weight; or who, at any time, offers for shipment, ships or receives for shipment or transportation from the state of California to any place in any other state, territory or foreign country any striped bass of less than three pounds in weight, caught or taken in the waters of this state, is guilty of a misdemeanor; provided that the possession of such striped bass shall be prima facie evidence of the fact that such striped bass were caught or taken in the waters of this state." 5. Amended by Stats. 1909, p. 520. For original § 628a, added in 1895, see ante, Legislation § 628.

#### **Black bass. Limit of catch.**

§ 628b. Every person who, between the first day of January and the first day of June of each year, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any black bass; or who, at any time, except with hook and line, takes, catches, or kills any black bass; or who takes, catches, kills, or has in his possession, more than fifty black bass during any one calendar day, is guilty of a misdemeanor.

Legislation § 628b. 1. Added by Stats. 1895, p. 259, as part of § 628: q.v., ante, Legislation § 628a. 2. §§ 628 and 628a combined, amended, and added to, forming § 628 as amended by Stats. 1897, p. 347 (q.v., ante, Legislation § 628), the subject-matter remaining a part of § 628 until 1905. 3. Added by Stats. 1905, p. 187, as a new section, and then read: "628b. Every person who, between the first day of January and the first day of June of each year, buys, sells, offers for sale, takes, catches, kills, or has in his pos-

session, any black bass; or who, at any time, except with hook and line, takes, catches or kills any black bass, is guilty of a misdemeanor." 4. Amended by Stats. 1907, p. 802.

**Young fish of any species. Fish in pond or reservoir belonging to state. Penalty.**

§ 628c. Every person who, by seine or other means, catches the young fish of any species and does not immediately return the same to the water alive, or who buys, sells or offers for sale, or has in his possession, any such fish, whether fresh or dried; or who catches, takes, kills, or carries away any fish from any pond or reservoir belonging to, or controlled by, the board of fish commissioners, or any person or corporation, without the consent of the owners thereof, which pond or reservoir has been stocked with fish; or who, except with hook and line, takes, catches, or kills any kind of fish in any river or stream upon which a fish-hatchery is maintained, is guilty of a misdemeanor. Nothing in this section, or elsewhere in this code contained, shall prohibit the United States fish commission and the fish commission of this state, from taking at all times such fish as they may deem necessary for scientific purposes or for purposes of propagation.

Legislation § 628c. Added by Stats. 1905, p. 187.

**Fine or imprisonment. Disposition of fines.**

§ 628d. Every person found guilty of a violation of any of the provisions of sections six hundred and twenty-eight, six hundred and twenty-eight a, six hundred and twenty-eight b, and six hundred and twenty-eight c, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail, in the county in which the conviction is had, not less than twenty nor more than one hundred and fifty days, or by both such fine and imprisonment. All fines collected for any violation of any of the provisions of said sections must be paid into the state treasury to the credit of the "fish commission fund."

Legislation § 628d. Added by Stats. 1905, p. 187.

**Surf-fish, protection of.**

§ 628e. Every person who at any time, except with hook and line, takes, catches or kills any California whiting (*Menticirrhus undulatus*)

also known as surf-fish, or any yellow-fin or any spot-fin croaker, is guilty of a misdemeanor. And all fines collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "fish commission fund."

Legislation § 628e. Added by Stats. 1909, p. 418.

**Screen over mill-race, pipe, etc. Penalty. Disposition of fines.**

§ 629. Any person, company, or corporation, owning, in whole or in part, or leasing, operating, or having in charge any mill-race, irrigating ditch, pipe, flume, or canal, taking or receiving its waters from any river, creek, stream, or lake in which fish have been placed, or may exist, shall put, or cause to be placed and maintained, over the inlet of such pipe, flume, ditch, canal, or mill-race, a screen of such construction and fineness, strength, and quality as shall prevent any such fish from entering such ditch, pipe, flume, canal, or mill-race, when required to do so by the state board of fish commissioners. Any person, company, or corporation violating any of the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars or imprisoned in the county jail of the county in which the conviction shall be had not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "fish commission fund"; provided, that the continuance from day to day of the neglect or refusal, after notification in writing by the state board of fish commissioners, shall constitute a separate offense for each day.

Legislation § 629. 1. Added by Stats. 1895, p. 259, and then read: "Any person or persons, corporation or corporations, owning, in whole or in part, or leasing, operating, or having in charge, any mill-race, irrigating-ditch, or canal, taking or receiving its waters from any river, creek, stream, or lake in which fish have been placed or may exist, shall put, or cause to be placed and maintain over the inlet of said ditch, canal, or mill-race, a wire screen of such construction and fineness, strength and quality, as shall prevent any such fish from entering such ditch, canal, or mill-race, when required to do so by the fish commissioners. Any person or corporation violating the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dol-

lars, and may be imprisoned at the rate of two dollars per day until such fine be paid or satisfied; provided, that the continuance from day to day of the neglect or refusal, after notification in writing by the fish commissioners, shall constitute a separate offense." 2. Amendment by Stats. 1901, p. 476; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1903, p. 24, the section then reading as when added in 1895, down to the words "or mill-race" in the second instance, the section thereafter proceeding, "a screen of such construction and fineness, strength, and quality as shall prevent any such fish from entering such ditch, canal, or mill-race, when required to do so by the state board of fish commissioners, and any person or corporation violating any of the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars or imprisoned in the county jail of the county in which the conviction shall be had not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for violation of any of the provisions of this section shall be paid into the state treasury to the credit of the 'fish commission fund,'" the proviso reading as when enacted in 1895. 4. Amended by Stats. 1905, p. 187. The original code § 629, entitled "Having game in possession during the time that killing thereof is prohibited," was repealed in 1888.

Citations. Cal. 77/82.

Acts relating to fishing and the protection of fish: See post, Appendix, tit. "Fish."

**§ 630. [Use of phosphorus on land in certain counties prohibited. Repealed.]**

Legislation § 630. 1. Enacted February 14, 1872; based on Stats. 1868, p. 185, §§ 1, 2. 2. Repealed by Stats. 1897, p. 848.

**Net, pound, cage, trap, etc., not to be used.**

§ 631. Every person who takes, kills, or destroys by use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, any of the birds or animals mentioned in this chapter, or who transports, buys, sells, or gives away, offers or exposes for sale, or has in his possession, any of the said birds or animals that have been taken, killed, or captured by the use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, whether taken in the state of California, or shipped into the state from any other state, territory or foreign country, is guilty of a misdemeanor; provided, that the same may be taken for the purpose of propagation, or for scientific purposes, written permission having first been obtained from the state board of fish commissioners. Proof of possession of

any such birds or animals which do not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, is prima facie evidence in any prosecution for violation of the provisions of this section, that the person in whose possession such birds or animals are found, took, killed, or destroyed the same by means of a net, pound, cage, trap, set line or wire, or by the use of poisonous substance.

**Legislation § 631.** 1. Added by Code Amdts. 1880, p. 42, as an amendment of the original code § 631 (which was entitled "Taking trout, when prohibited"; q.v., post, Legislation § 632; but see post, Legislation § 633, on the subject of nets, etc.), and then read: "631. Any person or persons who shall, at any time, net, pound, weir, cage, or trap any quail, partridge, or grouse, or who shall take from any net, pound, weir, cage, or trap, any quail, partridge, or grouse, and retain in his possession, or sell, or give away the same, is guilty of a misdemeanor." 2. Amended by Stats. 1881, p. 73, to read: "631. Any person or persons who shall at any time net, pound, weir, cage, or trap any quail, partridge, or grouse, and any person or persons who shall sell, or give away, or shall have in his or her possession any quail, partridge, or grouse, that have been snared, captured, or taken in or by means of any net, pound, weir, cage, or trap, is guilty of a misdemeanor." 3. Amended by Stats. 1883, p. 81, to read: "631. Every person who shall at any time net, pound, weir, cage, or trap any quail, partridge, or grouse, and every person who shall sell, buy, transport, or give away, or offer or expose for sale, or have in his possession any quail, partridge, or grouse that have been snared, captured, or taken in or by means of any net, pound, weir, cage, or trap, is guilty of a misdemeanor. Proof of possession of any quail, partridge, or grouse which shall not show evidence of having been taken by means other than a net, pound, weir, cage, or trap, shall be prima facie evidence in any prosecution for a violation of the provisions of this section, that the person in whose possession such quail, partridge, or grouse is found, took, killed, or destroyed the same by means of a net, pound, weir, cage, or trap." 4. Amended by Stats. 1887, p. 237, to read: "631. Every person who shall at any time net or pound any quail, partridge, or grouse, and every person who shall sell, buy, transport, or give away, or offer or expose for sale, or have in his possession, any quail, partridge, or grouse that have been snared, captured, or taken in or by means of any net or pound, is guilty of a misdemeanor. Proof of possession of any quail, partridge, or grouse, which shall not show evidence of having been taken by means other than a net or pound, shall be prima facie evidence in any prosecution for a violation of the provisions of this section that the person in whose possession such quail, partridge, or grouse is found, took, killed, or destroyed the same by means of a net or pound." 5. Amended by Stats. 1895, p. 260, (1) changing the first sentence to read: "631. Every person who shall, at any time, net or pound, cage or trap, any quail, partridge, or grouse, and every person who shall sell, transport, or give away, or offer or expose for sale, or have in his possession any quail, partridge, or grouse that has been

snared, captured, or taken by means of any net or pound, cage or trap, whether taken in the state of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor; provided, the same may be taken for the purposes of propagation, written permission having been first obtained from the game-warden of the county wherein said birds are to be taken"; (2) in second sentence, omitting the article "a" before "violation," and before "net or pound" at end of section. 6. Amended by Stats. 1901, p. 822, to read: "631. Every person who takes, kills, or destroys, by the use of any net, pound, cage, trap, set line or wire, any quail, partridge, grouse, wild duck, curlew, or ibis, or who transports, buys, sells or gives away, offers or exposes for sale, or has in his possession, any of the said birds that have been taken, killed, or captured by the use of any net, pound, cage, trap, set line or wire, whether taken in the state of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor; provided, that the same may be taken for purposes of propagation or for scientific purposes, written permission having first been obtained from the game commissioner or the state board of fish commissioners." 7. Amended by Stats. 1905, p. 257. For original code § 631, see *infra*, Legislation § 632.

#### Penalty for violation.

§ 631a. Every person found guilty of a violation of any of the provisions of sections six hundred and twenty-six, six hundred and twenty-six a, six hundred and twenty-six b, six hundred and twenty-six c, six hundred and twenty-six d, six hundred and twenty-six f, six hundred and twenty-six g, six hundred and twenty-six h, six hundred and twenty-six i, six hundred and twenty-six j, six hundred and twenty-six k, six hundred and twenty-six m, sections six hundred and twenty-seven, six hundred and twenty-seven a, six hundred and twenty-seven b, and section six hundred and thirty-one, must be fined in a sum not less than twenty-five dollars nor more than five hundred dollars, or imprisonment in the county jail of the county in which the conviction shall be had, not less than twenty-five days nor more than one hundred and fifty days, or by both such fine and imprisonment.

Legislation § 631a. 1. Added by Stats. 1901, p. 822. 2. Amended by Stats. 1905, p. 258, omitting from the series of section numbers "six hundred and twenty-six e."

#### Disposition of money from fines. Game-preservation fund.

§ 631b. All fines paid or collected for the violation of any of the provisions of sections six hundred and twenty-six, six hundred and twenty-six a, six hundred and twenty-six b, six hundred and twenty-



six c, six hundred and twenty-six d, six hundred and twenty-six e, six hundred and twenty-six f, six hundred and twenty-six g, six hundred and twenty-six h, six hundred and twenty-six i, six hundred and twenty-six j, six hundred and twenty-six k, six hundred and twenty-six m, six hundred and twenty-seven, six hundred and twenty-seven a, six hundred and twenty-seven b, and six hundred and thirty-one, of this chapter, must be paid by the court in which the conviction shall be had into the state treasury to the credit of the game-preservation fund, which fund is hereby created, and the moneys in said fund shall be applied to the payment of claims approved by the game commissioner or the state board of fish commissioners for the expense of protecting, restoring and introducing game into the state and to the payment of the expenses incurred in the prosecution of offenders against the provisions of the above-named sections.

**Legislation § 631b.** Added by Stats. 1901, p. 822.

**Penalty for violation.**

§ 631c. Every person found guilty of a violation of any of the provisions of sections six hundred and twenty-six e must be fined in a sum not less than fifty dollars nor more than five hundred dollars or imprisonment in the county jail of the county in which the conviction shall be had, not less than fifty days nor more than one hundred and fifty days, or by both such fine or [and] imprisonment.

**Legislation § 631c.** Added by Stats. 1905, p. 258.

**Trout. Limit of catch. Penalty. Disposition of fines.**

§ 632. Every person who, between the fifteenth day of November in any year and the first day of May of the year following, buys, sells, takes, catches, kills; or has in his possession, any variety of whitefish or trout, except steelhead-trout; or who, between the first day of April, nineteen hundred and seven, and the first day of May, nineteen hundred and nine, takes, catches, kills, or has in his possession any variety of golden trout; or who at any time buys, sells, or offers for sale any trout of less than one pound in weight; or who, at any time takes, catches or kills any trout, except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty trout; or who at any time takes or catches any trout, steelhead-trout or salmon of less than five inches

in length, without at once returning the same to the water from which it was taken or caught; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, trout, other than steelhead-trout, the total weight of which exceeds twenty-five pounds, is guilty of a misdemeanor. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or be punished by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the "fish commission fund." Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for purpose of propagation of for scientific purposes.

Legislation § 632. 1. Enacted February 14, 1872 (based on Stats. 1862, p. 94; Stats. 1867-68, p. 460; Stats. 1869-70, p. 668), as §§ 631 (§ 632 being purely local) and 632, both of these original code sections then reading: "631. Every person who, between the fifteenth day of October in each year and the first day of April in the following year, takes or catches any trout, is guilty of a misdemeanor. 632. Every person who, in the counties of Santa Clara, Santa Cruz, San Mateo, Monterey, Alameda, Marin, Placer, or Nevada, at any time takes or catches any trout, except with hook and line, is guilty of a misdemeanor." 2. § 632 amended by Code Amdts. 1873-74, p. 464, the series of counties then being "Santa Clara, Santa Cruz, San Mateo, Monterey, Alameda, Marin, Placer, Nevada, Plumas, or Sierra." 3. § 632 amended by Code Amdts. 1875-76, p. 114, the series of counties then being "Santa Clara, Alpine, Santa Cruz, Lake, San Mateo, Monterey, Sonoma, Tuolumne, Alameda, Marin, Placer, Nevada, Plumas, Sierra, San Luis Obispo, Solano, Mariposa, Mendocino, or Napa." 4. § 632 amended by Stats. 1888, p. 81, to read: "632. Every person who, in the state of California, at any time, takes or catches any trout, except with hook and line, is guilty of a misdemeanor. Any person or persons who shall, at any time, take, procure, or destroy any fish of any kind by means of explosives, is guilty of a misdemeanor." 5. § 632 amended by Stats. 1895, p. 260, to read: "632. Every person who, in the state of California, at any time takes or catches any trout, except with hook and line, is guilty of a misdemeanor." 6. § 632 amended by Stats. 1897, p. 20, to read: "632. Every person who buys, sells, offers or exposes for sale any kind of trout less than six inches in length; every person who takes, catches, kills, buys, sells, exposes or offers for sale, or has in his possession any salmon-trout, brook, or lake trout, or any variety of trout, except steelhead-trout (*Salmo gairdneri*), between the first day of December and the first day of April of the following year; every person who buys, sells, offers or exposes

for sale any steelhead-trout (*Salmo gairdneri*), between the first day of February and the first day of May of each year; every person who, at any time, takes or catches any trout, except with hook and line, is guilty of a misdemeanor; provided, however, that steelhead-trout (*Salmo gairdneri*) may be taken in tide-water, between the first day of May and the first day of February of the following year, with lawful nets; and a lawful net shall be a net that when placed in the water is unsecured and free to float with the current or tide, and the meshes of which are, when drawn closely together and measured inside the knot, not less than seven and one half inches in length. Every person found guilty of any violation of any of the provisions of this section shall be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which conviction shall be had not less than ten days, or be punished by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the 'fish commission fund.' Nothing in this section shall prohibit the possession at any time of steelhead-trout (*Salmo gairdneri*) when taken in tide-water with hook and line, and nothing shall prohibit the United States fish commission and the fish commission of this state from taking, at all such times, such fish as they deem necessary for the purpose of artificial hatching." 7. § 632 amended by Stats. 1901, p. 55, to read: "632. Every person who, between the first day of November in any year and the first day of April of the year following, buys, sells, takes, catches, kills or has in his possession, any variety of trout, except steelhead-trout (*Salmo gairdneri*), or who, between the first day of February and the first day of April, buys, sells, takes, catches or has in his possession, any steelhead-trout (*Salmo gairdneri*), or who, between the first day of November and the first day of April of the year following, takes, kills, or catches, any steelhead-trout above tide-water, or who, at any time, buys, sells, or offers for sale, any trout of less than one half pound weight, or takes or catches any trout except with hook and line, is guilty of a misdemeanor; provided, however, that steelhead-trout (*Salmo gairdneri*) may be taken in tide-water between the first day of April and the first day of February of the following year, with lawful nets, and a lawful net is a net that when placed in the water is unsecured and free to drift with the current, or tide, and the meshes of which are, when drawn closely together and measured inside the knot not less than seven and one half inches in length. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county, not less than ten days, or be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the 'fish commission fund.' Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking, at all times, such trout as they deem necessary for the purpose of propagation." 8. § 632 amended by Stats. 1903, p. 24, (1) the first sentence then reading, "632. Every person who, between the first day of November in any year and the first day of April of the year following, buys, sells, takes, catches, kills, or has in his possession, any variety of trout, except steelhead-trout (*Salmo gairdneri*); or

who, between the first day of February and the first day of April; or, between the tenth day of September and the sixteenth day of October of each year, buys, sells, takes, catches, or has in his possession, any steelhead-trout (*Salmo gairdneri*); or who, between the first day of November and the first day of April of the year following, takes, kills, or catches any steelhead-trout above tide-water; or who, at any time, buys, sells, or offers for sale, any trout of less than one half pound weight, or takes or catches any trout except with hook and line, is guilty of a misdemeanor; provided, however, that steelhead-trout (*Salmo gairdaeri*) may be taken in tide-water between the first day of April and the tenth day of September of each year, and between the sixteenth day of October and first day of February of the following year, with lawful nets; and a lawful net is a net that when placed in the water is unsecured and free to drift with the current or tide, and the meshes of which are, when drawn closely together and measured inside the knot, not less than seven and one half inches in length"; (2) the second sentence reading as at present (amendment of 1907); (3) the final sentence not having, at the end, the words "or for scientific purposes" (added in 1905). 9. § 682 amended by Stats. 1905, p. 188, (1) the first sentence then reading, "682. Every person who, between the first day of November in any year and the first day of April of the year following, buys, sells, takes, catches, kills, or has in his possession, any variety of trout, except steelhead-trout (*Salmo gairdneri*); or who, between the first day of February and the first day of April, or between the tenth day of September and the sixteenth day of October of each year, buys, sells, takes, catches, kills or has in his possession, any steelhead-trout (*Salmo gairdneri*); or who between the first day of November and the first day of April of the year following, takes, kills, or catches any steelhead-trout above tide-water; or who, at any time, buys, sells, or offers for sale, any trout of less than one pound in weight; or who, at any time, takes, catches or kills any trout except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty trout; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, trout, other than steelhead-trout, the total weight of which exceeds twenty-five pounds, is guilty of a misdemeanor"; (2) the second sentence reading as at present (amendment of 1907); (3) adding at end of section the words "or for scientific purposes." 10. § 682 amended by Stats. 1907, p. 302.

**Steelhead-trout. Limit of catch. Export of trout. Penalty. Propagation.**

§ 632½. Every person who, between the first day of February and the first day of April of any year, takes, catches, kills, destroys, or has in his possession, any steelhead-trout; or who, between the fifteenth day of November and the first day of February of the year following, buys, sells, takes, catches, kills, or has in his possession, any steelhead-trout taken above tide-water, or who, at any time, takes,

catches, or kills, any steelhead-trout, except with hook and line; or who, has in his possession any steelhead-trout which have been taken, caught, or killed, except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty steelhead-trout; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, steelhead-trout, the total weight of which exceeds fifty pounds caught, taken, or killed in the waters of this state; is guilty of a misdemeanor. Every person who offers for shipment, ships, carries, transports, or receives for shipment or transportation from the state of California to any place in any state, territory, or foreign country any steelhead or other trout, caught, or taken in the waters of this state, is guilty of a misdemeanor; provided that the possession of such steelhead or other trout shall be prima facie evidence, of the fact that such steelhead or other trout were caught or taken in the waters of this state. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days, or by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury, to the credit of the fish commission fund. Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for the purpose of propagation or for scientific purposes.

Legislation § 632½. 1. Added by Stats. 1907, p. 303, and then read: "Every person who, between the first day of February and the first day of April of any year, or who, between the seventeenth day of September and the twenty-third day of October of any year, buys, sells, takes, catches, kills, or has in his possession any steelhead-trout, or who between the first day of April and the first day of May of any year, takes, catches, or kills, any steelhead-trout above tide-water, or who, at any time takes, catches or kills, any steelhead-trout, except with hook and line, or has in his possession any steelhead-trout which have been taken, caught or killed, except with hook and line; or who, at any time takes, catches, kills or has in his possession, during any one calendar day, more than fifty steelhead-trout, is guilty of a misdemeanor. Every person who offers for shipment, ships, or receives for shipment or transportation from the state of California to any place in any other state, territory or foreign country, any steelhead or other trout caught or taken in the waters of this state, is guilty of a misdemeanor; provided

that the possession of such steelhead or other trout shall be prima facie evidence of the fact that such steelhead or other trout were caught or taken in the waters of this state. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or to be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the 'fish commission fund.' Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for the purpose of propagation or for scientific purposes." 2. Amended by Stats. 1909, p. 520.

**Shipment of trout. Penalty. Disposition of fines.**

§ 632a. Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day, more than fifty trout, or trout, excepting steelhead-trout, the total weight of which exceeds twenty-five pounds, or who transports any trout, in any quantity, unless such trout are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor, and is punishable by a fine of not less than twenty dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "fish commission fund."

**Legislation § 632a.** Added by Stats. 1905, p. 188. For original § 632a, added by Stats. 1895, and repealed in 1897, see post, Legislation § 685, amdt. of § 635 in 1895.

**Sacramento perch.**

§ 632b. Every person who, at any time, prior to the first day of January, one thousand nine hundred and eleven, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any Sacramento perch, is guilty of a misdemeanor and is punishable by a fine of not less than twenty dollars [n]or more than five hundred dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than twenty days [n]or more than one hundred and

fifty days, or be punished by both such fine and imprisonment, and all fines collected for any violation of the provisions of this section must be paid into the state treasury to the credit of the "fish commission fund."

Legislation § 632b. Added by Stats. 1907, p. 804. The original § 632b, added by Stats. 1895, p. 261, entitled "Only hook and line to be used in streams where United States hatchery is located," was repealed by Stats. 1897, p. 848, the subject-matter of the section being transferred at that session to § 628.

#### **Salmon or steelhead roe as bait prohibited.**

§ 632b. Every person who at any time takes, catches or kills any steelhead-trout, or any other variety of trout, by using salmon roe, or steelhead roe as bait in any of the waters of this state other than salt or brackish waters, or who has in his possession, any steelhead-trout, or other trout that were taken, caught, or killed, by using such salmon roe or steelhead roe as bait in said waters, is guilty of a misdemeanor.

Legislation § 632b. Added by Stats. 1909, p. 973. See *supra*, Legislation § 632b, for original § 632b.

#### **Golden trout, protection of. Penalty.**

§ 633. Every person, who at any time between the first day of September and the first day of June of the succeeding year, takes, catches, kills, destroys, or has in his possession, any variety of golden trout, or who, at any time, takes, catches, kills or destroys any variety of golden trout other than with hook and line; or who, at any time, takes, catches, kills, or destroys, or has in his possession during one calendar day more than twenty golden trout, or has in his possession any variety of golden trout of less than five inches in length, is guilty of a misdemeanor. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the fish commission fund. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state from

taking at all times such golden trout as they deem necessary for the purpose of propagation or for scientific purposes.

**Legislation § 633.** 1. Enacted February 14, 1872 (see ante, Legislation § 631, on subject of nets, etc., and post, Legislation § 636, on same subject), and then read: "633. Every person who takes, catches, or kills any trout by the use of nets, weirs, baskets, or traps, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1877-78, p. 120 (the legislature at this session transferring the subject of nets, etc., to § 636, q.v., post), changing the section to read: "633. Every person who takes, catches, or kills any speckled trout, brook, or salmon-trout, or any variety of trout, between the first day of November and the first day of April in the following year, is guilty of a misdemeanor." 3. Amended by Stats. 1891, p. 110, to read: "633. Every person who takes, catches, or kills, or exposes for sale, or has in his possession, any speckled trout, brook or salmon trout, or any variety of trout, between the first day of November and the first day of April in the following year, except salmon-trout taken with rod and line in tide-water, is guilty of a misdemeanor." 4. Amended by Stats. 1895, p. 261, to read: "633. Every person who takes, catches, or kills, or exposes for sale, or has in his possession any speckled trout, brook or salmon trout, or any variety of trout, between the first day of November and the first day of April in the following year, is guilty of a misdemeanor; provided, however, that steelhead-trout may be possessed at any time, when taken with rod and line in tide-water. Every person who buys or sells or offers or exposes for sale, within this state, any kind of trout less than six inches in length, is guilty of a misdemeanor." 5. Repealed by Stats. 1897, p. 348. 6. Added as a new section by Stats. 1909, p. 880.

**Fresh salmon. Nets and seines. Penalty. Limits of tide-water.**

§ 634. Every person who, between the seventeenth day of September and the twenty-third day of October of each year, takes, catches, or kills, buys, sells, offers or exposes for sale, or has in his possession, any fresh salmon; every person who, between the twenty-third day of October and the fifteenth day of November of each year, takes, catches, or kills any salmon above tide-water; every person who shall cast, extend or draw, or assist in casting, extending or drawing any net or seine for the purpose of taking or catching salmon, shad or striped bass, in any of the waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, in any of the waters of this state, fishes with or uses any seine or net, drag-net, or paranzella, any of the meshes of which are, when drawn closely together and measured inside the knot, less than six and one half inches, in



length; every person who, for the purpose of catching shad or striped bass in any of the waters of the state, fishes with or uses any seine or net, drag-net, or paranzella, any of the meshes of which are, when drawn closely together and measured inside the knot, less than five and one half inches in length, is guilty of a misdemeanor, and is punishable by a fine of not less than two hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all fines imposed and collected for any violations of the provisions of this section shall be paid into the fish commission fund. In the construction and meaning of this section, the limits of tide-water in the Sacramento River shall be deemed to extend from its mouth to the city of Sacramento; in the San Joaquin River, from its mouth to the Southern Pacific railroad bridge near Lathrop, in San Joaquin County; in Eel River in Humboldt County, from its mouth to east boundary line of township three (3) north range two (2) west Humboldt meridian; in the Klamath River, to a point on the river north of the residence of James McGarvey; in Smith River, in Del Norte County, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state from taking at all times, such fish as they deem necessary for the purpose of artificial hatching.

**Legislation § 634.** 1. Enacted February 14, 1872, and then read: "Every person who, between the first day of June and the first day of September in each year, takes or catches any salmon, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1873-74, p. 465, to read: "Every person who, between the first day of August and the first day of November in each year, takes or catches any salmon, is guilty of a misdemeanor; the possession of any salmon during said period shall be prima facie evidence of a violation of this section. Any person catching, or having in possession, or offering for sale, shad, within three years from the passage of this act, shall be guilty of a misdemeanor." 3. Amended by Code Amdts. 1875-76, p. 114, to read: "Every person who, between the first day of August and the first day of November in each year, takes, or catches, buys, sells, or has in his possession any fresh salmon, is guilty of a misdemeanor. Any person catching, or having in possession, or offering for sale shad, at any time prior to the first Monday of December, A. D. eighteen hundred and seventy-seven, is guilty of a misdemeanor. The following counties are exempted from the provisions of the first section of this bill: Del Norte, Humboldt, Shasta, and Mendocino." 4. Amended by Code Amdts. 1877-78, p. 120, to read: "Every person who,

between the first day of August and the fifteenth day of September of each year, takes or catches, buys, sells, or has in his possession, any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or shall assist in setting or drawing, any net or seine, for the purpose of taking or catching salmon, in any of the waters of this state, at any time between sunrise of each Saturday and twelve o'clock noon of the following Sunday, is guilty of a misdemeanor. Every person who, between the first day of April and the thirty-first day of December in each year, takes or catches, buys, sells, or has in his possession, any fresh shad, is guilty of a misdemeanor. Nothing in this chapter shall be so construed as to prohibit any person from catching fish with hook and line, at any time, in the tide-waters of this state." 5. Amended by Stats. 1881, p. 18, to read: "Every person who, between the thirty-first day of July, and the first day of September of each year, takes, or catches, buys, sells, or has in his possession any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing any net or seine for the purpose of taking or catching salmon in any of the waters of this state, at any time between sunrise of each Saturday and twelve o'clock noon of the following Sunday, is guilty of a misdemeanor. Every person who, between the first day of April and the thirty-first day of December in each year, takes or catches, buys or sells, or has in his possession any fresh shad, is guilty of a misdemeanor. Nothing in this section shall be so construed as to prohibit any person from catching fish with hook and line, at any time, in the tide-waters of the state." 6. Amended by Stats. 1883, p. 81, to read: "Every person who, between the thirty-first day of July and the first day of September of each year, takes or catches, buys, sells, or has in his possession any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon or shad in any of the public waters of this state, at any time between sunrise of each Saturday and twelve o'clock noon of the following Sunday, is guilty of a misdemeanor. Every person who shall, for the purpose of catching salmon or shad in any of the navigable rivers, streams, or sloughs of this state, fish with or use any seine, or net, the meshes of which are, when drawn close together and measured longitudinally, less than seven and one half inches in length, is guilty of a misdemeanor." 7. Amended by Stats. 1885, p. 99, to read: "Every person who, between the thirty-first day of August and the first day of October of each year, takes or catches, buys, sells, or has in his possession, any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon or shad in any of the public waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday, is guilty of a misdemeanor. Every person who shall, for the purpose of catching shad or salmon, in any public waters of this state, fish with or use any seine or net, the meshes, when drawn closely together and measured, inside the knot, less than seven and one half inches in length, is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars, or in default, not less than one hundred days in the county jail. One half of all

moneys collected for fines for violation of the provisions of this chapter, shall be paid to the informer, one quarter to the district attorney of the county in which the action is tried, and one quarter shall be paid into the fish commission fund; all other costs shall be charged and collected from the county in which the action is prosecuted. Nothing in this chapter shall prohibit the United States fish commissioners, or the fish commissioners of this state, from taking such fish as they deem necessary for the purpose of artificial hatching at all times." 8. Amended by Stats. 1895, p. 261, to read: "Every person who, between the thirty-first day of August and the first day of November of each year, takes or catches, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad, or striped bass in any of the public waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday, is guilty of a misdemeanor. Every person who shall, for the purpose of catching shad, salmon, or striped bass in any of the public waters of this state, fish with or use any seine or net, drag-net or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one half inches in length, is guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, or in default, not less than one hundred days in the county jail. All moneys collected for fines for the violation of any of the provisions of this chapter shall be paid into the general fund of the county in which the conviction is had." 9. Amended by Stats. 1897, p. 20, to read: "Every person who, between the tenth day of September and the sixteenth day of October of each year, takes or catches, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon; every person who, between the fifteenth day of October and the fifteenth day of November of each year, takes or catches any salmon above tide-water; every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad, striped bass, or sturgeon, in any of the waters of the state, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, shad, striped bass, or sturgeon, in any of the waters of the state, fish with or use any seine or net, drag-net, or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one half inches in length, is guilty of a misdemeanor, and is punishable by a fine not less than two hundred dollars, or by imprisonment in the county jail in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all the fines imposed and collected for any violations of the provisions of this section shall be paid into the 'fish commission fund.' In the construction and meaning of this section, the limits of tide-water in the Sacramento River shall be deemed to extend from its mouth to the city of Sacramento; in the San Joaquin River, from its mouth to the Southern Pacific railroad bridge, near Lathrop, in San Joaquin County; in Eel River, in Humboldt County, from its mouth to East Ferry, above the town of Fortuna; in the Klamath River, to a point on the river north of the

residence of James McGarvey; in Smith River, in Del Norte County, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state, from taking, at all times, such fish as they deem necessary for the purposes of artificial hatching. It shall be no defense in a prosecution for the violation of any of the provisions of this section that the fish were caught or taken outside or within this state." 10. Amended by Stats. 1907, p. 304, to read: "Every person who between the seventeenth day of September and the twenty-third day of October of each year, takes, catches or kills, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon; every person who, between the twenty-third day of October and the fifteenth day of November of each year, takes or catches any salmon above tide-water; every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad or striped bass, in any of the waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, shad or striped bass, in any of the waters of this state, fishes with or uses any seine or net, drag-net, or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one half inches in length, is guilty of a misdemeanor, and is punishable by a fine not less than two hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all fines imposed and collected for any violations of the provisions of this section shall be paid into the 'fish commission fund.' In the construction and meaning of this section, the limits of tide-water in the Sacramento River shall be deemed to extend from its mouth to the city of Sacramento; in the San Joaquin River, from its mouth to the Southern Pacific railroad bridge near Lathrop, in San Joaquin County; in Eel River, in Humboldt County, from its mouth to East Ferry, above the town of Fortuna; in the Klamath River, to a point on the river north of the residence of James McGarvey; in Smith River, in Del Norte County, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state, from taking, at all times, such fish as they deem necessary for the purpose of artificial hatching. It shall be no defense in a prosecution for the violations of any of the provisions of this section that the fish were caught or taken outside or within this state." 11. Amended by Stats 1909, p. 521.

Citations. Cal. 78/258; 107/281; 189/115, 116, 465. App. 8/687.

#### **Use of explosives and pollution of waters.**

§ 635. Every person who places or causes to be placed in any of the waters of this state, dynamite, gunpowder, or other explosive compound, for the purpose of killing or taking fish; or who takes, procures, kills, or destroys any fish of any kind by means of explosives; or who places or allows to pass, or who places where it can pass into

any of the waters of this state, any lime, gas, tar, cocculus indicus, slag, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, is guilty of a misdemeanor, and is punishable by a fine of not less than two hundred and fifty dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than one hundred and twenty-five days, or by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "fish commission fund."

**Legislation § 635.** 1. Enacted February 14, 1872, and then read: "635. Every person who puts into the waters of this state, or who uses any poisons, or explosive substances, for the purpose of taking or destroying fish, is guilty of a misdemeanor." 2. Amended by Code Amdts. 1875-76, p. 115, to read: "635. Every person who places, or allows to pass into any of the waters of this state, any lime, gas, tar, cocculus indicus, or any other substance deleterious to fish, is guilty of a misdemeanor. And every person who uses any poisonous or explosive substances for the purpose of taking or destroying fish, is guilty of a misdemeanor; provided, that sawdust shall not be deemed a deleterious substance. Any person who shall catch, take, or carry away any trout, or other fish, from any stream, pond, or reservoir, belonging to any person or corporation, without the consent of the owner thereof, which stream, pond, or reservoir has been stocked with fish by hatching therein eggs or spawn, or by placing the same therein, is guilty of a misdemeanor." 3. Amended by Stats. 1889, p. 61, to read: "635. Every person who places or allows to pass into any of the waters of this state any lime, gas, tar, cocculus indicus, sawdust, or any substance deleterious to fish, is guilty of a misdemeanor. And every person who uses any poisonous or explosive substances for the purpose of taking or destroying fish is guilty of a misdemeanor. Any person who shall catch, take, or carry away any trout or other fish from any stream, pond, or reservoir, belonging to any person or corporation, without the consent of the owner thereof, which stream, pond, or reservoir has been stocked with fish by hatching therein eggs or spawn, or by placing the same therein, is guilty of a misdemeanor." 4. § 635 was amended and split into two sections in 1895,—§§ 632a, 635,—§ 632a being repealed by Stats. 1897, p. 848, and at that session was again combined with § 635. § 632a added as a new section by Stats. 1895, p. 260, and then read: "632a. Any person who shall place, or cause to be placed, in any of the waters of the state, dynamite, gunpowder, or other explosive compound, for the purpose of killing or taking fish, or who shall at any time take, procure, kill, or destroy any fish of any kind by means of explosives, shall be guilty of a misdemeanor. Every person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than one hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than

one hundred days, or be punished by both such fine and imprisonment." § 635 amended by Stats. 1895, p. 261, to read: "635. Every person who places or allows to pass into any of the waters of this state any lime, gas, tar, cocculus indicus, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, is guilty of a misdemeanor. Every person who shall catch, take, or carry away any trout or other fish from any stream, pond, or reservoir, belonging to any person or corporation, without the consent of the owner thereof, which stream, pond, or reservoir has been stocked with fish by hatching therein eggs or spawn, or by placing the same therein, is guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than one hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than fifty days, or be punished by both such fine and imprisonment." 5. § 635 amended by Stats. 1897, p. 349 (being an amendment and combination of § 632a as added and § 635 as amended in 1895, § 632a being repealed by Stats. 1897, p. 348), and then read: "635. Every person who shall place or cause to be placed in any of the waters of this state, dynamite, gunpowder, or other explosive compound, for the purpose of killing or taking fish, or who shall at any time take, procure, kill, or destroy any fish of any kind by means of explosives; every person who passes or allows to pass, or who places where it can pass, into any of the waters of this state, any lime, gas, tar, cocculus indicus, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, is guilty of a misdemeanor, and is punishable by a fine of not less than two hundred and fifty dollars, or imprisonment in the county jail in the county in which conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment." 6. Amended by Stats. 1901, p. 55, and then read the same as the amendment of 1903 (the present section), down to the words "two hundred and fifty dollars," the rest of the section reading, "or by imprisonment in the county jail in the county, not less than one hundred and fifty days, or by both such fine and imprisonment." 7. Amended by Stats. 1903, p. 25.

Citations. Cal. 107/281.

#### Use of seines and set-nets. Penalty.

§ 636. Every person who shall cast, extend, or use any seine, or net of any kind, for the catching of any fish in any river, stream or slough of this state, which shall extend more than one third across the width of said river, stream, or slough at the time and place of such fishing; every person who shall cast, extend, or use, or continue, or who shall assist in casting, extending, using, or continuing, "Chinese shrimp or bag net," or a net of a similar character, for the catching of fish in the waters of this state; every person who shall cast, extend, set, use, or continue, or have in his possession, or who shall

assist in casting, extending, or using "Chinese sturgeon-lines," set-lines, or lines of a similar character; every person who shall set, use or continue, or shall assist in setting, using, or continuing, any pound, weir, set-net, set-line, trap, or any other fixed or permanent contrivance for catching fish in the waters of this state—and every net shall be considered a set-net that is secured in any way and not free to drift with the current or tide—is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than fifty days, or by both such fine and imprisonment; and all the fines imposed and collected for any violation of any of the provisions of this section shall be paid into the fish commission fund.

Legislation § 636. 1. Added by Code Amdts. 1875-76, p. 115, as an amendment of the original code § 636, which read: "636. California Indians, taking fish for their own subsistence, are exempted from the penalties prescribed in sections 631, 632, 633, and 634." As thus added in 1875-76, p. 115, § 636 read: "Any person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, weir, set-net, stake-net, trap, or other fixed or permanent contrivance for catching fish in any of the waters of this state, is guilty of a misdemeanor. Any person who shall hereafter close or keep closed, or in condition to catch or ensnare any shrimp, or cause to be closed or kept closed, or in condition to catch or ensnare any shrimp, any pound, weir, set-net, stake-net, trap, or other fixed or permanent contrivance for catching the same, placed in the waters aforesaid, is guilty of a misdemeanor. Any person who shall draw or shall assist in setting or drawing any net or seine for the purpose of taking shrimp in any of the waters of this state, at any time between the setting of the sun on the evening of each Saturday and the rising of the sun on the morning of the succeeding Monday, is guilty of a misdemeanor. Any person who shall draw or who shall assist in drawing any net or seine, for the purpose of taking fish in any of the waters of this state, the meshes of which are less than one and one half inches in size, is guilty of a misdemeanor; provided, that nets with a mesh of a smaller size may be used in the catching of shrimps. Any person who shall cast, extend, or set any seine or net of any kind, for the catching of fish in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing, is guilty of a misdemeanor. Any person who, by seines, or any other means, shall catch any fish so small as to be able to escape through a mesh of one and one half inches in size, or the young fish of any species, but which, at the time of capture, are too small to be marketable, and who shall not return the same to the water immediately and alive, or who shall sell or offer for sale any such fish, is guilty of a

misdeemeanor. One third of all penalties received under this section shall be paid to the informer; one third to the district attorney of the county in which the case is prosecuted, and one third to the school fund of said county; provided, that nothing in this section shall be construed to affect any special laws now in force in this state for the preservation of fish; provided, that in the waters of Carquinez Straits and Napa River set-nets and stake-nets may be set and used of meshes not less than two and a half inches." 2. Amended by Code Amdts. 1877-78, p. 120, to read: "Every person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, weir, set-net, trap, or other fixed or permanent contrivance for catching fish in the waters of any of the rivers, creeks, or sloughs of this state, are guilty of a misdemeanor. Every person who shall draw, or who shall assist in drawing, any net or seine for the purpose of taking fish in any of the waters of this state, the meshes of which are less than one and one fourth inches in size, is guilty of a misdemeanor; provided, that nets with a mesh of a smaller size may be used in the catching of shrimps. Every person who shall cast, extend, or set any seine or net of any kind, for the catching of fish, in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing, is guilty of a misdemeanor. Every person who, by seine or any other means, shall catch any fish so small as to be able to escape through a mesh of one and one half inches in size, or the young of fish of any species, but which, at the time of capture, are too small to be marketed, and who shall not return the same to the water immediately and alive, or who shall sell, or offer for sale, any such fish, fresh or dried, is guilty of a misdemeanor. Every person convicted of violation of any of the provisions of this chapter shall be punished by fine of not less than fifty dollars, and not more than three hundred dollars, or imprisoned in the county jail of the county where the offense was committed for not less than thirty days nor more than six months, or by both such fine and imprisonment. One half of all moneys collected for fines for violation of the provisions of this chapter shall be paid to informers, and one half thereof to the district attorney of the county in which the action is prosecuted; all other costs shall be a charge against the county in which the action is prosecuted. Nothing in this chapter shall be construed to prohibit the United States fish commissioners, or the fish commissioners of the state of California, from taking such fish as they shall deem necessary for the purpose of artificial hatching, nor at any time. All nets, seines, fishing-tackle, boats, or other implements used in catching or taking fish in violation of the provisions of this chapter, shall be forfeited, and may be seized by the peace-officer of the county, or assistant, or person acting under the authority of the fish commissioners, and may be by them destroyed, or may be sold at public auction by the party making such seizure, upon notice posted in said county for five days. The person making such seizure and sale shall be entitled to retain one half of the proceeds of such sale, and the balance shall be paid into the school fund of the county, in case the seizure and sale is made by a peace-officer thereof, or to the fish commissioners, if made by a person appointed by them; provided, that all nets



having meshes of less than one and a half inches in size, when seized under the provisions of this section, must be destroyed." 3. Amended by Stats. 1881, p. 12, (1) changing the first part of the section to read: "Every person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, weir, set-net, trap, or other fixed or permanent contrivance for catching fish in the waters of this state, is guilty of a misdemeanor. Every person who shall cast, extend, or set any seine, or net of any kind, for the catching of fish in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing, is guilty of a misdemeanor. Every person who, by seine, or any other means, shall catch the young of fish of any species, which at the time of capture are too small to be marketed, and who shall not return the same to the water, immediately and alive, or who shall sell, or offer for sale, any such fish, fresh or dried, is guilty of a misdemeanor"; (2) in sentence beginning "Every person convicted," (a) adding "a" before "violation," and (b) changing "imprisoned" to "imprisonment"; (3) in sentence beginning "One half," changing "shall be a charge" to "shall be charged"; (4) in sentence beginning "All nets," (a) omitting "the authority of" after "acting under," and (b) changing "said county" to "such county." 4. Amended by Stats. 1883, p. 82, (1) in first sentence, adding "any" before "other fixed or permanent"; (2) in sentence beginning "Every person who, by seine," omitting "which at the time of capture are too small to be marketed," after "fish of any species"; (3) in sentence beginning "One half," omitting "thereof" after "and one half"; (4) omitting all the subject-matter of the section from and including the sentence beginning "All nets" to the end, and adding in lieu thereof, "It shall not be lawful for any person to buy or sell, or offer or expose for sale within this state, any kind of trout (except brook-trout) less than eight inches in length. Any person violating the provisions of this section is guilty of a misdemeanor." 5. Amended by Stats. 1887, p. 287, to read: "Every person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, weir, set-net, trap, or any other fixed or permanent contrivance for catching fish in the waters of this state, is guilty of a misdemeanor. Every person who shall cast, extend, or set any seine, or net of any kind, for the catching of, [fish] in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing, is guilty of a misdemeanor. Every person who shall cast, extend, set, use, or continue, or who shall assist in casting, extending, using, or continuing 'Chinese sturgeon-lines,' or 'Chinese shrimp or bag nets,' or lines or nets of similar character, for the catching of fish in the waters of this state, is guilty of a misdemeanor. Every person who, by seine or any other means, shall catch the young fish of any species, and who shall not return the same to the water immediately and alive, or who shall sell, or offer for sale, any such fish, fresh or dried, is guilty of a misdemeanor. Every person convicted of a violation of any of the provisions of this chapter shall be punished by fine of not less than fifty dollars, or imprisonment in the county jail

of the county where the offense was committed, for not less than thirty days nor more than six months, or by both such fine and imprisonment. One third of all moneys collected for fines for violation of the provisions of this chapter is to be paid to informer, one third to the district attorney of the county in which the action is prosecuted, and one third to the fish commissioners of the state of California. Nothing in this chapter shall be construed to prohibit the United States fish commissioners or the fish commissioners of the state of California from taking such fish as they shall deem necessary for the purpose of artificial hatchery, nor at any time. It shall not be lawful for any person to buy, or sell, or offer or expose for sale, within this state, any kind of trout (except brook-trout) less than eight inches in length. Any person violating any of the provisions of this section is guilty of a misdemeanor. The board of supervisors of the several counties of this state are authorized by ordinance, duly passed and published, to change the beginning or ending of the close season named in section six hundred and twenty-six of this code, so as to make the same conform to the needs of their respective counties, whenever, in their judgment, they deem the same advisable." 6. Amended by Stats. 1893, p. 215, (1) in first sentence beginning "Every person who shall cast," after the words "for the catching of," inserting the word "fish," omitted through a typographical or clerical error in the amendment of 1887; (2) at end of sentence beginning "Every person who, by seine," adding a proviso, and, after this proviso, two new sentences, reading, "provided, that it shall be permissible to use or set any sturgeon-gear which will protect fish by catching sea-lions and other fish-destroying animals; such gear to consist of hooks made from not larger than number three, nor smaller than number five, wire or forged iron, standard measurement. Permission to set or use said hooks shall only be granted by the state board of fish commissioners, and upon the payment to them of an annual license of ten dollars. Every person who shall set, use, or cause to be set or used, or assist in the same, except as provided herein, is guilty of a misdemeanor"; (8) changing the sentence beginning "Every person convicted" to read, "Every person convicted of a violation of any of the provisions of this chapter shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, or imprisonment in the county jail of the county where the offense was committed for not less than sixty days nor more than twelve months, or by both such fine and imprisonment"; (4) in sentence beginning "One third," adding "the" before "informer"; (5) in sentence beginning "The board of supervisors," changing "beginning or ending" to "beginning and ending." 7. Amended by Stats. 1895, p. 262, (1) adding a new sentence after the first, which read, "Any net shall be considered a set-net when fastened in any way to a fixed or stationary object"; (2) after the first sentence beginning "Every person who shall cast," changing the section to read, "Every person who shall cast, extend, set, use, or continue, or who shall assist in casting, extending, using, or continuing 'Chinese shrimp or bag nets,' or nets of similar character, for the catching of fish in the waters of this state, is guilty of a misdemeanor. Every person who shall cast, extend, set, use, or continue, or have in his possession, or who shall assist in

casting, extending, using, or continuing 'Chinese sturgeon-lines,' or lines of similar character, is guilty of a misdemeanor. Every person who, by seine or other means, shall catch the young fish of any species, and who shall not return the same to the water immediately and alive, or who shall sell or offer for sale any such fish, fresh or dried, is guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than one hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than one hundred days, or be punished by both such fine and imprisonment. Nothing in this chapter shall prohibit the United States fish commissioners, or the fish commissioners of the state, from taking such fish as they deem necessary for the purpose of artificial hatching at all times." 8. Amended by Stats. 1897, p. 849, and differed from the amendment of 1909 (the present section), having, (1) in first line, "or set any seine" instead of "or use any seine"; (2) "extend, set, use, or continue," instead of "extend, or use, or continue," in second instance; (3) "net of similar" instead of "net of a similar," in first instance; (4) not having "set-lines" after "Chinese sturgeon-lines" nor after "set-net"; (5) "'fish commissioners' fund'" instead of "'fish commission fund,'" at end of section. 9. Amended by Stats. 1909, p. 521.

Citations. Cal. 57/251, 252; 73/258; 107/281; 114/371; 124/151, 152, 153, 154; 189/116; 143/641.

#### **Nets, seines, etc., prohibited.**

§ 636a. Any net, seine, drag-net, paranzella, or set-net used for taking or catching fish, which shall be used or maintained in any of the waters of this state in violation of any existing or hereafter enacted statutes or laws of this state for the protection of fish, is hereby declared to be a public nuisance, and it is the duty of every peace-officer to seize and keep the same and report such seizure to the board of fish commissioners of the state. Thereupon said board must commence proceedings in the superior court of the county or city and county in which the same shall be seized, by filing a petition in said court, asking for a judgment forfeiting such net, seine, drag-net, paranzella, or set-net so seized, and ordering the destruction thereof. Upon the filing of such petition, is the duty of the clerk of said court to fix a time for the hearing thereof and to cause notices to be posted for the space of fourteen days in at least three public places in the town, city, or city and county, where the court is held, setting forth the substance of such petition and the time and place fixed for its hearing, and if at the time fixed for such hearing, no person appears and claims such net, seine, drag-net, paranzella, or

set-net, the court must proceed to hear and determine said proceeding according to law, and upon proof that the said net, seine, drag-net, paranzella, or set-net was used in violation of law, must order the same to be forfeited and destroyed.

Legislation § 636a. Added by Stats. 1901, p. 56.

**Fish commissioners to examine dams. Fishways to be constructed.  
Penalty.**

§ 637. It shall be the duty of the state board of fish commissioners to examine, from time to time, all dams and artificial obstructions in all rivers and streams in this state naturally frequented by salmon, shad, and other migratory fish; and if, in their opinion, there is not free passage for fish over or around any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same, within a specified time, with a durable and efficient fishway, of such form and capacity, and in such location as shall be determined by the fish commissioners, or persons authorized by them, and such fishway must be completed by the owners or occupants of such dam or artificial obstruction to the satisfaction of said commissioners, within the time specified; and it shall be incumbent upon the owners or occupants of all dams or artificial obstructions, where the state board of fish commissioners require such fishways to be provided, to keep the same in repair and open and free from obstructions to the passage of fish at all times; and no person shall willfully destroy, injure, or obstruct any such fishway, or at any time take or catch any salmon, shad, or other migratory fish or trout, except by hook and line within three hundred feet of any fishway required by the state board of fish commissioners to be provided and kept open, or at any time take or catch any such fish in any manner within fifty feet of such fishway; and every person violating any of the provisions of this act is guilty of a misdemeanor, and every person found guilty of a violation of any of the provisions of this act must be fined in a sum not less than one hundred dollars, or imprisoned in the county jail of the county in which the conviction shall be had not less than fifty days, or by both such fine and imprisonment; and all fines imposed and collected for any violations of the provisions of this act shall be paid into the state treasury to the credit of the "fish commission fund."

**Legislation § 637.** 1. Enacted February 14, 1872, and then read: "637. Every owner of a dam or other obstruction in the waters of this state, who, after being requested by the fish commissioners so to do, fails to construct and keep in repair sufficient fishways or ladders on such dam or obstruction, is guilty of a misdemeanor." 2. Amended by Stats. 1891, p. 93, to read: "Section 1. 637. Every owner of a dam or other obstruction in any running water of this state, who, after being ordered and notified by the fish commissioners to construct a fish-ladder on or to repair a fish-ladder already constructed on such dam or other obstruction according to the plans of the fish commissioners, fails to construct or repair such fish-ladder, within thirty days after such notice, is guilty of a misdemeanor, and upon conviction shall pay a fine of not less than fifty dollars nor more than two hundred, or by imprisonment in the county jail in which such conviction is had of not less than twenty-five days nor more than one hundred days. 2. One half of all moneys collected as fines for violations of the provisions of this act shall be paid to the informer, one fourth to the district attorney of the county where the conviction is secured, and the remaining one fourth shall be paid to the state board of fish commissioners of this state, to be by them used for the purposes and in conformity of 'An Act to authorize the state board of fish commissioners to import game-birds into the state for propagation,' approved March sixteenth, eighteen hundred and eighty-nine." 3. Amendment by Stats. 1901, p. 476; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1908, p. 25, that part of the amendment relating to the obstruction or destruction of fishways or fish-ladders being an adoption of the code commissioners' unconstitutional § 637a in 1901.

Citations. Cal. 185/470.

Acts relating to fishing and the protection of fish: See post, Appendix, tit. "Fish."

#### Protection of wild birds. Game-birds enumerated.

§ 637a. Every person in the state of California who shall at any time kill or catch, or have in his possession, living or dead, any wild bird other than a game-bird, or who shall purchase, offer or expose for sale, transport or ship within or out of the state, any such wild bird after it has been killed or caught, except as permitted by this act, shall be guilty of a misdemeanor. No part of the plumage, skin or body of any bird protected by this section shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state. For the purposes of this act the following only shall be considered game-birds: The Anatidæ commonly known as swans, geese, brant and river and sea ducks; the Rallidæ, commonly known as rails, coots, mud-hens and gallinules; the Limicolæ, commonly known as shore-birds, plover, surf-birds,

snipe, sandpipers, tattlers, and curlews; the Gallinæ, commonly known as wild turkeys, grouse, prairie-chickens, pheasants, partridges, and quails; and the species of Columbidae, known as wild pigeons and doves. All other species of wild birds either resident or migratory shall be considered non-game birds; provided, that the English or European house-sparrow, the great-horned owl, sharp-shinned hawk, Cooper's hawk, duck-hawk, butcher-bird, blue jay, and house-finch, commonly known as the California linnæ, are not included among the birds protected by this act; provided further, that nothing in this section shall prohibit the killing of a meadow-lark, robin, or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold; and nothing in this act shall prevent a citizen of California from taking or keeping any wild non-game bird as a domestic pet if such bird shall not be sold or offered for sale, or transported out of the state, a permit to keep the same having first been obtained from the state board of fish commissioners.

Legislation § 637a. 1. Added by Stats. 1901, p. 578, and read: "Every person who in the state of California shall at any time hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the state of California for the purpose of propagation or for educational or scientific purposes, any meadow-lark or any part of the skin, skins or plumage thereof, or who shall rob the nest or take or destroy the eggs of any meadow-lark, shall be guilty of a misdemeanor; provided, that nothing in this section shall prohibit the killing of a meadow-lark by the owner or tenant of any premises where such bird is found destroying berries, fruits, or crops, growing on such premises." 2. Amended by Stats. 1905, p. 114, to read: "Every person who, in the state of California, shall at any time, hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the state of California, for the purpose of propagation or for education or scientific purposes, any meadow-lark, or any wild bird, living or dead, or any part of any dead wild bird, or who shall rob the nest, or take, sell or offer for sale or destroy the eggs of any meadow-lark or of any wild bird, is guilty of a misdemeanor; provided, that nothing in this section shall prohibit the killing of a meadow-lark or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold. The English sparrow, sharp-shinned hawk, Cooper's hawk, duck-hawk, great-horned owl, blue jay, house-finch (known also as the California linnæ), and

all birds otherwise protected by the provisions of this code and those birds commonly known as game-birds, are not included among the birds protected by this section." 3. Amended by Stats. 1907, p. 762, to read: "Every person who, in the state of California, shall at any time, hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the state of California, for the purpose of propagation or for education or scientific purposes, any meadow-lark, robin, or any wild bird, living or dead, or any part of any dead wild bird, or who shall rob the nest, or take, sell or offer for sale or destroy the eggs of any meadow-lark, robin, or of any wild bird, is guilty of a misdemeanor; provided that nothing in this section shall prohibit the killing of a meadow-lark, robin, or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold. The English sparrow, sharp-shinned hawk, Cooper's hawk, duck-hawk, great-horned owl, blue jay, butcher-bird, house-finch (known also as the California Linnet), wild pigeon, all fish-eating birds, except sea-gulls and the blue and white crane or heron, and all birds otherwise protected by the provisions of this code, are not included among the birds protected by this section." 4. Amended by Stats. 1909, p. 935. The code commissioners, in 1901, added a section numbered 687a (as to which, see *supra*, Legislation § 687); unconstitutional: See note, § 5, ante.

#### **Application of prohibition.**

§ 637b. The provisions of this chapter prohibiting any person from having in his possession any fish or game or parts thereof at any time, or during the seasons herein specified, shall, unless express provisions be made herein to the contrary, apply to all such fish or game or parts thereof, whether the said fish or game or the fish or game from which the parts were taken were caught or killed in the state of California, or the said fish or game or parts thereof were shipped into this state from any other state, territory or foreign country.

Legislation § 637b. Added by Stats. 1907, p. 762.

#### **Seals in Santa Barbara Channel, protection of.**

§ 637c. Every person who shoots or otherwise kills, destroys, wounds, maims, takes, captures or cripples, by seines, set-nets; nets, traps, nets or any other kind of fixed, permanent or loose trap or contrivance, and seal or sea-lion, in the waters of the Santa Barbara Channel, or on, near or about any lands adjacent thereto, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than one hundred dollars or by imprisonment in the county

jail not less than sixty days, or by both such fine and imprisonment; provided, that the state fish commission may grant permission to any person whom it deems fit, to kill, trap, net, or capture alive, seals or sea-lions for scientific or exhibition purposes, the number allowed to be killed or captured to be specified in said permit.

**Legislation § 637c.** Added by Stats. 1909, p. 326.

#### **Transportation of non-game birds.**

§ 637d. Every person or corporation acting as a common carrier, its officers, agents or servants, who shall ship, carry, take or transport whether within or beyond the confines of the state any resident or migratory non-game bird, except as permitted by this code, shall be guilty of a misdemeanor.

**Legislation § 637d.** Added by Stats. 1909, p. 936.

#### **Certificates giving right to take birds.**

§ 637e. Section six hundred and thirty-seven a, six hundred and thirty-seven c, and six hundred and thirty-seven d shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs for scientific purposes only, as hereinafter provided. Certificates may be granted by the board of fish commissioners to any properly accredited person permitting the holder thereof to collect birds, their nests or eggs for scientific purposes only. All certificates authorized by this act shall expire on the thirty-first day of December of the year issued, and shall not be transferable. On proof that the holder of such certificate has killed any bird, or has taken the nest or eggs of any bird for other than strictly scientific purposes his certificate shall become void, the birds, nests or eggs collected under such certificate shall be forfeited, and shall be delivered by the board of fish commissioners to some public museum of natural history in the state, and the holder of the certificate shall be guilty of a misdemeanor.

**Legislation § 637e.** Added by Stats. 1909, p. 936.

#### **Protection of nests.**

§ 637f. Every person who shall within the state of California take or needlessly destroy, or attempt to take or destroy, the nests or



eggs of any wild bird protected by this code, or have such nests or eggs in his possession, except as permitted by this code is guilty of a misdemeanor.

Legislation § 637f. Added by Stats. 1909, p. 936.

## CHAPTER II.

### Other and Miscellaneous Offenses.

- § 638. Neglect or postponement of telegraphic or telephonic messages.
- § 639. Employee using information contained in telegraphic or telephonic messages.
- § 640. Clandestinely learning contents of telegraphic or telephonic messages.
- § 641. Bribing telegraph or telephone operator.
- § 642. Collecting tolls, etc., at San Francisco, without authority of harbor commissioners.
- § 643. Violations of the provisions of the chapter relating to police regulations of San Francisco harbor.
- § 644. Enticing seamen to desert.
- § 645. Harboring deserting seamen. [Repealed.]
- § 646. Aiding apprentices to run away or harboring them.
- § 647. Vagrants, who are. Penalty.
- § 648. Issuing or circulating paper money.
- § 649. Officers of fire department issuing false certificates of exemption.
- § 650. Sending letters threatening to expose another.
- § 650½. Seriously injuring persons or property, etc., a misdemeanor.
- § 651. Requiring wards or apprentices to work more than eight hours.
- § 652. Officer or member of national guard failing to attend parade, obey orders, or discharge duty.
- § 653. Member of national guard failing to attend parade, etc., when notified.
- § 653½. Appraisers of estates not to accept fee or reward.
- § 653b. Abuse of school teachers.
- § 653c. Unlawful for state officer, agent of the state, contractor, or subcontractor, to permit workmen upon public works to work more than eight hours per day.
- § 653d. Retaining wages of employee.
- § 654. Abuse of school teachers. [Repealed.]

### Neglect or postponement of telegraphic or telephonic messages.

§ 638. Every agent, operator, or employee of any telegraph or telephone office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any

message received by telegraph or telephone, is guilty of a misdemeanor. Nothing herein contained must be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Legislation § 638. 1. Enacted February 14, 1872; based on Stats. 1862, p. 289, § 4. 2. Amendment by Stats. 1901, p. 477; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 690, (1) in first sentence, adding "or telephone" after "telegraph," in both instances; (2) in second sentence, changing "shall be construed" to "must be construed."

Carriers of messages: See Civ. Code, §§ 2161, 2162, 2207.

#### **Employee using information contained in telegraphic or telephonic messages.**

§ 639. Every agent, operator, or employee of any telegraph or telephone office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both by such fine and imprisonment.

Legislation § 639. 1. Enacted February 14, 1872; based on Stats. 1862, p. 289, § 3. 2. Amendment by Stats. 1901, p. 477; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 690, (1) adding "or telephone" after "telegraph."

#### **Clandestinely learning contents of telegraphic or telephonic messages**

§ 640. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph or telephone line,

or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph or telephone office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section six hundred and thirty-nine.

**Legislation § 640.** 1. Enacted February 14, 1872 (N. Y. Pen. Code, § 641); based on Stats. 1862, p. 289, § 6. 2. Amendment by Stats. 1901, p. 478; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 691, (1) adding "or telephone" after "telegraph," in both instances.

**Disclosing contents of message:** See ante, § 619.

#### **Bribing telegraph or telephone operator.**

§ 641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph or telephone agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employee, or uses or attempts to use any such information so obtained, is punishable as provided in section six hundred and thirty-nine.

**Legislation § 641.** 1. Enacted February 14, 1872; based on Stats. 1862, p. 290, § 7. 2. Amendment by Stats. 1901, p. 478; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 691, adding "or telephone" after "telegraph."

#### **Collecting tolls, etc., at San Francisco, without authority of harbor commissioners.**

§ 642. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water-front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the board of state harbor commissioners, without being by such board authorized so to do, is guilty of a misdemeanor.

**Legislation § 642.** 1. Enacted February 14, 1872; based on Stats. 1863-64, p. 145, § 11. 2. Amendment by Stats. 1901, p. 478; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 71/7.

**Wharfage:** See Pol. Code, §§ 2527, 2582.

Violations of the provisions of the chapter relating to police regulations of San Francisco harbor.

§ 643. Every person who violates any of the provisions of the laws of this state relating to sailor boarding-houses and shipping-offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor.

Legislation § 643. Enacted February 14, 1872; based on Stats. 1869-70, p. 244. The code commissioners say: "The reference is to the chapter relating to sailors' boarding-houses, boarding ships in San Francisco harbor, etc."

Citations. Cal. 71/7.

**Enticing seamen to desert.**

§ 644. Every person who entices seamen to desert from any vessel lying in the waters of this state, and on board of which they have shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor.

Legislation § 644. Enacted February 14, 1872; based on Stats. 1853, p. 186, § 1.

§ 645. [Harboring deserting seamen. Repealed.]

Legislation § 645. 1. Enacted February 14, 1872. 2. Repealed by Stats. 1907, p. 307.

**Aiding apprentices to run away or harboring them.**

§ 646. Every person who willfully and knowingly aids, assists, or encourages to run away, or who harbors or conceals any person bound or held to service or labor, is guilty of a misdemeanor.

Legislation § 646. Enacted February 14, 1872; based on Stats. 1858, p. 137, § 17.

**Vagrants, who are. Penalty.**

§ 647. 1. Every person (except a California Indian) without visible means of living who has the physical ability to work, and who does not seek employment, nor labor when employment is offered him;  
or

2. Every healthy beggar who solicits alms as a business; or

3. Every person who roams about from place to place without any lawful business; or

4. Every person known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession, or by his having been convicted of either of such offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, brokers office, place of amusement, auction-room, store, shop, or crowded thoroughfare, car, or omnibus, or at any public gathering or assembly; or

5. Every idle, or lewd, or dissolute person, or associate of known thieves; or

6. Every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or

7. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or

8. Every person who lives in and about houses of ill-fame; or

9. Every person who acts as a runner or capper for attorneys in and about police courts or city prisons; or

10. Every common prostitute; or

11. Every common drunkard, is a vagrant, and is punishable by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**Legislation § 647.** 1. Enacted February 14, 1872 (based on Stats. 1868, p. 770, § 1), and then read: "Every person (except a California Indian) without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; every lewd and dissolute person, who lives in and about houses of ill-fame, and every common prostitute and common drunkard, is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days." 2. Amended by Stats. 1891, p. 180, the act omitting the amending section, and the section as amended reading: "Sec-

tion 1. Every person (except a California Indian) without visible means of living, who has the physical ability to work, and who does not seek employment, nor labor when employment is offered him; or, 2. Every healthy beggar who solicits alms as a business; or, 3. Every person who roams about from place to place without any lawful business; or, 4. Every person known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession, or by his having been convicted of either of said offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction-room, store, shop, or crowded thoroughfare, car, or omnibus, or at any public gathering or assembly; or, 5. Every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night; or, 6. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or, 7. Every lewd or dissolute person who lives in and about houses of ill-fame; or, 8. Every person who acts as a runner or capper for attorneys in and about police courts or city prisons, in incorporated cities, or cities and counties; or, 9. Every common prostitute and common drunkard, is a vagrant, and is punishable by imprisonment in the county jail not exceeding six months." 3. Amended by Stats. 1901, p. 478; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1903, p. 96.

Citations. Cal. 72/885; 82/614; 88/102, 113; 108/57; 147/292; 150/118; 152/46; (subd. 5) 152/46; (subd. 6) 152/46, 49. App. (subd. 5) 7/765.

Living in or keeping house of ill-fame: See ante, § 815.

Jurisdiction of police courts in cases of: See Pol. Code, § 4428.

### Issuing or circulating paper money.

§ 648. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense, is guilty of a misdemeanor, and for each and every subsequent offense, is guilty of felony.

Legislation § 648. Enacted February 14, 1872; based on Stats. 1855, p. 128, §§ 1, 2.

Corporations prohibited from issuing bills, notes, etc., as money: See Civ. Code, § 356.

### Officers of fire department issuing false certificates of exemption.

§ 649. Every officer of a fire department who willfully issues or causes to be issued any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

Legislation § 649. Enacted February 14, 1872; based on Stats. 1864, p. 257, § 7.

**Sending letters threatening to expose another.**

§ 650. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

Legislation § 650. Enacted February 14, 1872. The code commissioners say: "This is founded upon part of § 110 of the Crimes and Punishment Act. (Stats. 1850, p. 229.) The portion of that section relating to sending threatening letters is incorporated in a section of the chapter relating to extortion."

Sending threatening letter: See ante, § 528.

Offense, when complete: See post, § 660.

**Seriously injuring persons or property, etc., a misdemeanor.**

§ 650½. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, or who willfully and wrongfully in any manner, verbal or written, uses another's name for accomplishing lewd or licentious purposes, whether such purposes are accomplished or not, or who willfully and wrongfully uses another's name in any manner that will affect, or have a tendency to affect the moral reputation of the person whose name is used, generally, or in the estimation of the person or persons to whom it is so used, or who with intent of accomplishing any lewd or licentious purpose, whether such purpose is accomplished or not, personifies any person other than himself, or who causes or procures any other person or persons to identify him, or to give assurance that he is any other person than himself to aid or assist him to accomplish any lewd or licentious purpose, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor.

Legislation § 650½. Added by Stats. 1908, p. 235. The enacting paragraph is omitted in the act adding this section, and the section itself has "Section 1" instead of the section number.

**Requiring wards or apprentices to work more than eight hours.**

§ 651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

**Legislation § 651.** Enacted February 14, 1872; based on Stats. 1867-68, p. 68; Stats. 1871-72, p. 951.

**Officer or member of national guard failing to attend parade, obey orders, or discharge duty.**

§ 652. Every commissioned officer of the national guard who willfully fails to attend any parade or encampment, and every member of the national guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars.

**Legislation § 652.** Enacted February 14, 1872.

**Disobeying orders:** Pol. Code, § 1912.

**Parades and drills:** Pol. Code, §§ 2008-2014.

**Member of national guard failing to attend parade, etc., when notified.**

§ 653. Every member of the national guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespectful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor.

**Legislation § 653.** Enacted February 14, 1872.

**Appraisers of estates not to accept fee or reward.**

§ 653½. Any appraiser, appointed by virtue of section one thousand four hundred and forty-four of the Civil Code of Procedure, who shall accept any fees, reward, or compensation other than that provided for by law, from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person, is guilty of a misdemeanor.

**Legislation § 653½.** 1. Added by Stats. 1899, p. 85. 2. Amended by Stats. 1901, p. 479, renumbering the section 653a; unconstitutional: See note, § 5, ante.

**Abuse of school teachers.**

§ 653b. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor.

**Legislation § 653b.** 1. Added by Code Amdts. 1873-74, p. 435, as § 654. 2. Amendment by Stats. 1901, p. 479, merely renumbering the section 653b;



unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 658, changing the number of the section from 654 to 653b.

Abusing teacher in presence of a class, a misdemeanor: See Pol. Code, § 1867.

Disturbing public schools or school meeting, a misdemeanor: See Pol. Code, § 1868.

**Unlawful for state officer, agent of the state, contractor, or subcontractor, to permit workmen upon public works to work more than eight hours per day.**

§ 653c. The time of service of any laborer, workman, or mechanic employed upon any of the public works of the state of California, or of any political subdivision thereof, or upon work done for said state, or any political subdivision thereof, is hereby limited and restricted to eight hours during any one calendar day; and it shall be unlawful for any officer or agent of said state, or of any political subdivision thereof, or for any contractor or subcontractor doing work under contract upon any public works aforesaid, who employs, or who directs or controls, the work of any laborer, workman, or mechanic, employed as herein aforesaid, to require or permit such laborer, workman, or mechanic, to labor more than eight hours during any one calendar day, except in cases of extraordinary emergency, caused by fire, flood, or danger to life or property, or except to work upon public military or naval defenses or works in time of war. Any officer or agent of the state of California, or of any political subdivision thereof, making or awarding, as such officer or agent, any contract, the execution of which involves or may involve the employment of any laborer, workman, or mechanic upon any of the public works, or upon any work, hereinbefore mentioned, shall cause to be inserted therein a stipulation which shall provide that the contractor to whom said contract is awarded shall forfeit, as a penalty, to the state or political subdivision in whose behalf the contract is made and awarded, ten dollars for each laborer, workman, or mechanic employed, in the execution of said contract, by him, or by any subcontractor under him, upon any of the public works, or upon any work, hereinbefore mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of this act; and it shall be the duty of such officer or agent to take cognizance of all

violations of the provisions of said act committed in the course of the execution of said contract, and to report the same to the representative of the state or political subdivision, party to the contract, authorized to pay to said contractor moneys becoming due to him under the said contract, and said representative, when making payments of moneys thus due, shall withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation. Any officer, agent, or representative of the state of California, or of any political subdivision thereof, who shall violate any of the provisions of this section, shall be deemed guilty of misdemeanor, and shall upon conviction be punished by fine not exceeding five hundred dollars, or by imprisonment, not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

**Legislation § 653c.** 1. Addition by Stats. 1901, p. 479, as § 653f; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 666; the code commissioner saying, "This is a new section, codifying, word for word, the eight-hour law (Stats. 1903, p. 119).

**Citations.** App. 6/615, 616, 617.

#### **Retaining wages of employee.**

§ 653d. Every person who employs laborers upon public works, and who takes, keeps, or receives for his own use any part or portion of the wages due to any such laborers from the state or municipal corporation for which such work is done, is guilty of a felony.

**Legislation § 653d.** 1. Addition by Stats. 1901, p. 479, as § 653g; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 667; the code commissioner saying: "This is a new section, codifying § 1 of the statute of 1871-72, p. 951, to protect wages of labor, inserting, however, the words 'for his own use,' to make same conform to intention of original act." For another section numbered 653d, added by the code commissioners in 1901, see ante, Legislation § 810.

#### **§ 654. [Abuse of school teachers. Repealed.]**

**Legislation § 654.** 1. Added by Code Amdts. 1873-74, p. 435. 2. Amendment by Stats. 1901, p. 479, renumbering the section 653b; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 658, renumbering the section 653b; q.v., ante; the code commissioner saying, "There were formerly in this code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read § 653b."

## TITLE XVI.

## General Provisions.

- § 654. Acts made punishable by different provisions of this code.
- § 654a. False representation as to quality or merits of goods sold or advertised.  
Penalty.
- § 655. Acts punishable under foreign law.
- § 656. Foreign conviction or acquittal.
- § 657. Contempts, how punishable.
- § 658. Mitigation of punishment in certain cases.
- § 659. Aiding in misdemeanor.
- § 660. Sending letters, when deemed complete.
- § 661. Removal from office for violation or neglect of official duty by public officer.
- § 662. Omission to perform duty, when punishable.
- § 663. Attempts to commit crimes, when punishable.
- § 664. Attempts to commit crimes, how punishable.
- § 665. Restrictions upon the preceding sections.
- § 666. Petty larceny, second offenses, punishment for.
- § 667. Second offenses, not petit, punishment for.
- § 668. Foreign conviction for former offense.
- § 669. Second term of imprisonment, when to commence.
- § 670. When term of imprisonment commences, etc.
- § 671. Imprisonment for life.
- § 672. Fine may be added to imprisonment.
- § 673. Civil rights of convict suspended.
- § 674. Civil death.
- § 675. Civil death, limitations as to.
- § 676. Person of convict protected.
- § 677. Forfeitures.
- § 678. Values in gold coin.
- § 679. Coercion or compulsion of persons seeking employment a misdemeanor.
- § 679a. Limiting sale of convict-made goods.
- § 680. Payment of wages to employees in a saloon or bar-room.

## Acts made punishable by different provisions of this code.

§ 654. An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in sections six hundred and forty-eight, six

hundred and sixty-seven, and six hundred and sixty-eight, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

**Legislation § 654.** Enacted February 14, 1872; based on Field Draft, § 737, N. Y. Pen. Code, § 677.

**Citations.** Cal. 49/395.

**Effect of plea of guilty:** See post, § 1158.

**False representation as to quality or merits of goods sold or advertised. Penalty.**

§ 654a. Any person, firm or corporation doing business in this state as a merchant, who advertises or displays any brand of goods known to the general public and quotes prices in connection therewith as an inducement to attract purchasers to the place of business so advertised, who shall make verbal or show printed or written false statements regarding the quality or merits of the goods advertised is guilty of a misdemeanor.

**Legislation § 654a.** Added by Stats. 1905, p. 228.

**Acts punishable under foreign law.**

§ 655. An act or omission declared punishable by this code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared.

**Legislation § 655.** Enacted February 14, 1872; based on Field Draft, § 738, N. Y. Pen. Code, § 678.

**Foreign conviction or acquittal.**

§ 656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another state, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

**Legislation § 656.** Enacted February 14, 1872; based on Field Draft, § 739, N. Y. Pen. Code, § 679. The code commissioners say: "This section is intended to apply in cases where the foreign acquittal or conviction took place in respect to the particular act or omission charged against the accused upon the trial in this state, and is not restricted to cases where the accused was tried abroad under the same or facts constituting the same charge."

**Foreign conviction or acquittal:** See also, post, §§ 668, 793, 794.

**Contempts, how punishable.**

§ 657. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Legislation § 657. Enacted February 14, 1872; identical with Field Draft, § 740, N. Y. Pen. Code, § 680.

Criminal contempts: See ante, § 166.

**Mitigation of punishment in certain cases.**

§ 658. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Legislation § 658. Enacted February 14, 1872; based on Field Draft, § 741, N. Y. Pen. Code, § 681.

**Aiding in misdemeanor.**

§ 659. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

Legislation § 659. Enacted February 14, 1872; identical with Field Draft, § 742, N. Y. Pen. Code, § 682.

Citations. Cal. 105/644. App. 8/352.

Accessories, defined: Ante, § 82.

Accessories, how punished: Ante, § 88.

**Sending letters, when deemed complete.**

§ 660. In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any post-office or any other place, or delivered to any person, with intent that it shall be forwarded.

Legislation § 660. Enacted February 14, 1872; based on Field Draft, § 743, N. Y. Pen. Code, § 683.

Threatening letters, sending, with intent to extort money: See ante, §§ 523, 650.

**Removal from office for violation or neglect of official duty by public officers.**

§ 661. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers, state, county, city, or township, where it is not so expressly provided, they may, in the discretion of the court, be removed from office.

Legislation § 661. Enacted February 14, 1872.

Removal, other than by impeachment: See post, §§ 758 et seq.

**Omission to perform duty, when punishable.**

§ 662. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf and competent by law to perform it.

Legislation § 662. Enacted February 14, 1872; identical with Field Draft, § 744, N. Y. Pen. Code, § 684.

**Attempts to commit crimes, when punishable.**

§ 663. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Legislation § 663. Enacted February 14, 1872; identical with Field Draft, § 745, N. Y. Pen. Code, § 84.

Citations. Cal. 142/14.

Attempt to commit crime, conviction of: See post, § 1159.

**Attempts to commit crimes, how punishable.**

§ 664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the state prison for five years, or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in a county jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the state prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one half the longest term of imprisonment and one half the largest fine which may be imposed upon a conviction for the offense so attempted.

**Legislation § 664.** Enacted February 14, 1872; based on Field Draft, § 746, N. Y. Pen. Code, § 677.

**Citations.** Cal. 49/398; 59/428; 60/72; 67/104; 75/571; 98/129; 135/269, 270; 138/160, 161; (subd. 1) 59/424; 142/14. App. 4/395, 396.

**What attempts not included in this section.** Attempts included in §§ 216, 217, and 220-222 are not included in this section.

#### **Restrictions upon the preceding sections.**

§ 665. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

**Legislation § 665.** Enacted February 14, 1872; identical with Field Draft, § 747, N. Y. Pen. Code, § 687.

#### **Petty larceny, second offenses, punishment for.**

§ 666. Every person who, having been convicted of petit larceny and having served a term therefor in any penal institution, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years.

2. If the subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the state prison

for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years.

Legislation § 666. 1. Enacted February 14, 1872 (almost identical with Field Draft, § 748, N. Y. Pen. Code, § 688), and then read: "Every person who, having been convicted of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor, as follows: 1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years. 2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years. 3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the state prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years." 2. Amended by Stats. 1903, p. 107, (1) the introductory paragraph then reading, "Every person who, having been convicted of petit larceny, or of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor as follows"; (2) subd. 1 had "ten years" instead of "five years," in first instance (the change being made in 1905), otherwise the section reading as at present. 3. Amended by Stats. 1905, p. 667, in subd. 1, changing "ten years" to "five years," in first instance; the code commissioner saying, "The amendment consists in the substitution of the word 'five' for 'ten.' At the session of 1903, §§ 666 and 667 were changed, the former being amended, and the latter repealed. Through a mistake in copying the proposed amendment to § 666, the section, as it was then amended, left a large class of cases unprovided for. The word 'ten,' in the fourth line of subd. 1, has been changed to 'five,' so that where the punishment for a first conviction would be six, seven, eight, nine, or ten years, some penalty shall attach; for as the section was amended in 1903, a second conviction for an offense punishable, say by seven, or even ten years, entailed no penalty." 4. Amended by Stats. 1909, p. 860, the only change being in the introductory paragraph.

Citations. Cal. 57/559; 64/388; 65/299, 300; 88/120, 174; 110/43; 118/389; 138/163; 148/599, 634; 145/610, 612; (subd. 2) 87/286; 120/272; 139/214; (subd. 3) 64/338, 341. App. 1/208; 5/426; 7/602.

Previous conviction, duty of jury to find on: See post, § 1158.



**Second offenses, not petit, punishment for.**

§ 667. Every person who, having been convicted of any offense punishable by imprisonment in the state prison, and having served a term therefor in any penal institution, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison, such person is punishable by imprisonment in the state prison for the maximum period for which he might have been sentenced, if such offense had been his first offense.

2. If the subsequent conviction is for petit larceny, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years, provided, however, that any person who has been, or who shall hereafter be, sentenced to the state prison shall be subject to parole by the state board of prison directors, under the restrictions now provided by law for the parole of first-term prisoners, any act to the contrary notwithstanding.

**Legislation § 667.** 1. Enacted February 14, 1872 (based on Field Draft, § 750, N. Y. Pen. Code, §§ 688, 693), and then read: "Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable as follows: 1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life. 2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense. 3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the state prison, then such person is punishable by imprisonment in such prison not exceeding five years." 2. Repealed by Stats. 1903, p. 108. 3. Added as a new section by Stats. 1909, p. 864.

**Citations.** Cal. 47/115; 61/137, 486; 109/298; 110/43; 138/162; (subd. 2) 109/297; (subd. 3) 49/395; 73/442.

**Foreign conviction for former offense.**

§ 668. Every person who has been convicted in any other state, government, or country, of an offense which, if committed within this

any person who would be punishable by the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a court of this state.

**Legislation § 668.** Enacted February 14, 1872; almost identical with Field Draft, § 751, N. Y. Pen. Code, § 679.

**Citations.** Cal. 61/486.

**Foreign conviction or acquittal:** See ante, § 656.

**Second term of imprisonment, when to commence.**

§ 669. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

**Legislation § 669.** Enacted February 14, 1872; identical with Field Draft, § 752, N. Y. Pen. Code, § 694.

**Citations.** Cal. 61/486; 76/519; 86/429; 132/348; 185/348; 145/186.

**When term of imprisonment commences, etc.**

§ 670. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

**Legislation § 670.** Enacted February 14, 1872.

**Citations.** Cal. 61/486; 86/429; 132/347; 185/341. App. 8/370, 371.

**Imprisonment for life.**

§ 671. Whenever any person is declared punishable for a crime by imprisonment in the state prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

**Legislation § 671.** Enacted February 14, 1872; based on Field Draft, § 753, N. Y. Pen. Code, § 696.

**Citations.** Cal. 61/486; 65/299; 98/129; 118/93; 123/416; 124/153; 131/816; 138/161.

#### **Fine may be added to imprisonment.**

§ 672. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the imprisonment prescribed.

**Legislation § 672.** Enacted February 14, 1872; based on Field Draft, § 756.

#### **Civil rights of convict suspended.**

§ 673. A sentence of imprisonment in a state prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

**Legislation § 673.** Enacted February 14, 1872; based on Field Draft, § 757, N. Y. Pen. Code, § 707.  
**Citations.** Cal. 124/565.

**Forfeiture of office on conviction of crime: See ante, § 98.**

#### **Civil death.**

§ 674. A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead.

**Legislation § 674.** Enacted February 14, 1872; based on Field Draft, § 758, N. Y. Pen. Code, § 708.  
**Citations.** Cal. 124/565; 125/419.

#### **Civil death, limitations as to.**

§ 675. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.

**Legislation § 675.** 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1873-74, p. 435, (1) adding "last" before "two preceding sections"; (2) omitting "or to do such other acts as are permitted by law," at end of section. 3. Amendment by Stats. 1901, p. 480; unconstitutional: See note, § 5, ante.

Citations. Cal. 124/565, 566; 125/419.

Prisoner as witness, how brought in, and proceedings on: See post, §§ 1833, 1867.

Deposition of prisoner, when and how taken: See post, § 1846.

#### Person of convict protected.

§ 676. The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Legislation § 676. Enacted February 14, 1872; identical with Field Draft, § 759, N. Y. Pen. Code, § 709.

Citations. Cal. 125/419.

#### Forfeitures.

§ 677. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deadand, or where any person shall flee from justice, are abolished.

Legislation § 677. Enacted February 14, 1872; based on Field Draft, § 760, N. Y. Pen. Code, § 710.

Citations. Cal. 124/565; 125/420. App. 7/294.

#### Values in gold coin.

§ 678. Whenever in this code the character or grade of an offense, or its punishment, is made to depend upon the value of property, such value shall be estimated exclusively in United States gold coin.

Legislation § 678. Added by Code Amdts. 1873-74, p. 435.

Citations. Cal. 131/234.

#### Coercion or compulsion of persons seeking employment a misdemeanor.

§ 679. Any person or corporation within this state, or agent or officer on behalf of such person or corporation, who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor.

Legislation § 679. Added by Stats. 1893, p. 176.

**Limiting sale of convict-made goods.**

§ 679a. 1. It shall be unlawful for any person to sell, expose for sale, or offer for sale within this state, any article or articles manufactured wholly or in part by convict or other prison labor, except articles the sale of which is specifically sanctioned by law.

2. Every person selling, exposing for sale, or offering for sale any article manufactured in this state wholly or in part by convict or other prison labor, the sale of which is not specifically sanctioned by law, shall be guilty of a misdemeanor.

Legislation § 679a. Added by Stats. 1901, p. 326.

**Payment of wages to employees in a saloon or bar-room.**

§ 680. Every person who shall pay any employee his wages, or any part thereof, while such employee is in any saloon, bar-room, or other place where intoxicating liquors are sold at retail, unless said employee is employed in such saloon, bar-room, or such other place where intoxicating liquors are sold, shall be deemed guilty of a misdemeanor.

Legislation § 680. Added by Stats. 1901, p. 660.



## PART II.

### CRIMINAL PROCEDURE.

- PRELIMINARY PROVISIONS. §§ 681-689.
- TITLE I. PREVENTION OF PUBLIC OFFENSES. §§ 692-734.**
- II. JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE. §§ 737-772.**
  - III. PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE. §§ 777-883.**
  - IV. PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT. §§ 888-937.**
  - V. THE INDIOTMENT. §§ 940-972.**
  - VI. PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL. §§ 976-1052.**
  - VII. PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT. §§ 1055-1188.**
  - VIII. JUDGMENT AND EXECUTION. §§ 1191-1230.**
  - IX. APPEALS TO THE SUPREME COURT. §§ 1235-1265.**
  - X. MISCELLANEOUS PROCEEDINGS. §§ 1268-1423.**
  - XI. PROCEEDINGS IN JUSTICES' AND POLICE COURTS AND APPEALS TO THE SUPERIOR COURTS. §§ 1425-1470.**
  - XII. SPECIAL PROCEEDINGS OF A CRIMINAL NATURE. §§ 1473-1564.**
  - XIII. PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON, OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT. § 1567.**
  - XIV. DISPOSITION OF FINES AND FORFEITURES. § 1570.**





## PRELIMINARY PROVISIONS.

- § 681. No person punishable but on legal conviction.
- § 682. Public offenses, how prosecuted.
- § 683. Criminal action defined.
- § 684. Parties to a criminal action.
- § 685. The party prosecuted known as defendant.
- § 686. Rights of defendant in a criminal action.
- § 687. Second prosecution for the same offense prohibited.
- § 688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
- § 689. No person to be convicted but upon verdict or judgment.

### No person punishable but on legal conviction.

§ 681. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

Legislation § 681. Enacted February 14, 1872 (N. Y. Code Crim. Proc.,

§ 3); based on Crim. Prac. Act, Stats. 1851, p. 212, § 6.

Citations. Cal. 68/180.

Constitutional guaranty: Const., art. i, § 13.

Conviction of public offense, how may be had: See post, § 689.

### Public offenses, how prosecuted.

§ 682. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the state;
2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the state may keep, with the consent of Congress, in time of peace;
3. Offenses tried in justices' and police courts.

Legislation § 682. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 4); based on Crim. Prac. Act, Stats. 1851, p. 212, § 7. 2. Amended by Code Amdts. 1880, p. 10, in introductory paragraph adding "or information" after "indictment."

Citations. Cal. 53/418; 57/561; 108/663; 109/450; 111/240; 145/87. App. 8/755.

Prosecution: See Const., art. i, §§ 8, 13.

Courts-martial: See Pol. Code, §§ 2021 et seq.

Offenses, how prosecuted: See post, § 889.

Proceedings for removal of officers may be by accusation or information: See post, § 889.

**Criminal action defined.**

§ 683. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Legislation § 683. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 5); based on Crim. Prac. Act, Stats. 1851, p. 212, § 8.

**Parties to a criminal action.**

§ 684. A criminal action is prosecuted in the name of the people of the state of California, as a party, against the person charged with the offense.

Legislation § 684. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 6); based on Crim. Prac. Act, Stats. 1851, p. 212, § 9.  
Citations. Cal. 61/58; 111/241.

**The party prosecuted known as defendant.**

§ 685. The party prosecuted in a criminal action is designated in this code as the defendant.

Legislation § 685. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 7); based on Crim. Prac. Act, Stats. 1851, p. 212, § 10.

**Rights of defendant in a criminal action.**

§ 686. In a criminal action the defendant is entitled:

1. To a speedy and public trial.
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the

court that he is dead or insane, or cannot with due diligence be found within the state.

**Legislation § 686.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 8); based on Crim. Prac. Act, Stats. 1851, p. 213, § 11.

**Citations.** Cal. 50/96; 54/577; 55/464; 57/568; 61/477; 64/86; 66/102, 676, 677; 73/207; 85/427; 99/233; 100/5; 105/656; 106/649, 650; 108/444; 111/88; 116/254; 138/578; 143/880, 882, 886, 576, 577, 578; (subd. 3) 98/131, 132; 116/251; 121/498; 126/381; 132/263; 151/204. App. 1/224; 3/44; 6/591.

**Constitutional provisions:** See Const., art. i, § 13.

**Depositions as evidence:** Post, §§ 869, 1345, 1362.

**Defendant may produce witnesses:** See post, § 866.

**Dismissal if defendant not brought to trial within sixty days:** See post, § 1382.

### **Second prosecution for the same offense prohibited.**

§ 687. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

**Legislation § 687.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 9); based on Crim. Prac. Act, Stats. 1851, p. 213, § 12, which read: "§ 12. No person shall be subject to a second prosecution for a public offense, for which he has once been prosecuted and duly convicted or acquitted."

**Citations.** Cal. 79/430; 99/231; 114/59; 132/501; 133/484, 485; 146/315.

**Constitutional provisions:** See Const., art. i, § 13; U. S. Const., amdt. 5.

**Dismissal no bar:** See post, § 999.

**No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.**

§ 688. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

**Legislation § 688.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 10); based on Crim. Prac. Act, Stats. 1851, p. 213, § 13, which read: "§ 13. No person shall be compelled in a criminal action to be a witness against himself, nor shall a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge."

**Citations.** Cal. 64/340; 73/443. App. 7/859. Crim. Prac. Act: Cal. (§ 13) 42/167, 169; 43/23.

Defendant offering himself as witness, examination of: See post, § 1823.

Defendant cannot be compelled to be witness against himself: See post, § 1828.

**No person to be convicted but upon verdict or judgment.**

§ 689. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section one thousand and eleven, or upon a judgment of a court, a jury having been waived in a criminal case not amounting to felony.

**Legislation § 689.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 218, § 14, which read: "§ 14. No person can be convicted of a public offense, unless by a verdict of a jury accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and sixty-six." When enacted in 1872, the latter part of § 689 read, "or upon judgment against him upon a demurrer to the indictment, in the case mentioned in section 1011, or upon a judgment of a police or justice's court, a jury having been waived." 2. Amended by Code Amdts. 1880, p. 4.

**Citations.** Cal. 64/841; 66/677; 68/180, 181, 183; 100/5. Crim. Prac. Act: Cal. (§ 14) 4/408; 14/145.

## TITLE I.

## Prevention of Public Offenses.

- Chapter I. Lawful Resistance. §§ 692-694.
- II. Intervention of the Officers of Justice. §§ 697, 698.
- III. Security to Keep the Peace. §§ 701-714.
- IV. Police in Cities and Towns, and Their Attendance at Exposed Places. §§ 719, 720.
- V. Suppression of Riots. §§ 723-734. •

## CHAPTER I.

## Lawful Resistance.

- § 692. Lawful resistance, by whom made.
- § 693. By the party, in what cases and to what extent.
- § 694. By other parties, in what cases.

## Lawful resistance, by whom made.

§ 692. Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured;
2. By other parties.

Legislation § 692. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 79); in exact language of Crim. Prac. Act, Stats. 1851, p. 213, § 15.

Citations. App. 2/456.

Personal rights: See Civ. Code, §§ 43-54.

## By the party, in what cases and to what extent.

§ 693. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

Legislation § 693. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 80); in language almost identical with that of Crim. Prac. Act, Stats. 1851, p. 213, § 16.

**By other parties, in what cases.**

§ 694. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

Legislation § 694. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 81); in exact language of Crim. Prac. Act, Stats. 1851, p. 214, § 17.  
Citations. Cal. 152/50.

## CHAPTER II.

### Intervention of the Officers of Justice.

§ 697. Intervention of officers, in what cases.

§ 698. Persons acting in their aid justified.

**Intervention of officers, in what cases.**

§ 697. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;
2. By forming a police in cities and towns, and by requiring their attendance in exposed places;
3. By suppressing riots.

Legislation § 697. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 82); in exact language of Crim. Prac. Act, Stats. 1851, p. 214, § 18.

Subd. 1. Security to keep the peace: See post, §§ 701-714.

Subd. 2. Police force: See post, §§ 719, 720. Officers authorized to preserve peace: Post, § 720.

Subd. 3. Suppression of riots: See post, §§ 728-734.

**Persons acting in their aid justified.**

§ 698. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

Legislation § 698. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 83); in language almost identical with that of Crim. Prac. Act, Stats. 1851, p. 214, § 19.

## CHAPTER III.

**Security to Keep the Peace.**

- § 701. Information of threatened offense.
- § 702. Examination of complainant and witnesses.
- § 703. Warrant of arrest.
- § 704. Proceedings on charges being controverted.
- § 705. Person complained of, when to be discharged.
- § 706. Security to keep the peace, when required.
- § 707. Effect of giving or refusing to give security.
- § 708. Person committed for not giving security, how discharged.
- § 709. Undertaking to be filed in clerk's office.
- § 710. Security, when required for assault committed in the presence of a court or magistrate.
- § 711. Undertaking, when broken.
- § 712. Undertaking, when and how prosecuted.
- § 713. Evidence of breach.
- § 714. Security for the peace not required, except in accordance with this chapter.

**Information of threatened offense.**

§ 701. An information may be laid before any of the magistrates mentioned in section eight hundred and eight, that a person has threatened to commit an offense against the person or property of another.

Legislation § 701. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 84); in substance the same as Crim. Prac. Act, § 20, as amended by Stats. 1868, p. 158, § 2. The code commissioners say: "The section referred to is § 108 of the Crimes and Punishment Act of 1851; the word 'information' is used in place of the word 'complaint,' as more expressive."

Citations. Cal. 128/29, 32.

**Examination of complainant and witnesses.**

§ 702. When the information is laid before such magistrate he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them.

Legislation § 702. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 85); in substance the same as Crim. Prac. Act, Stats. 1851, p. 214, § 21.

Citations. Cal. 128/29.

**Warrant of arrest.**

§ 703. If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so  
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informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the state, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

**Legislation § 703.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 86); in substance the same as Crim. Prac. Act, Stats. 1851, p. 214, § 22.  
**Citations.** Cal. 128/29.

#### **Proceedings on charges being controverted.**

§ 704. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

**Legislation § 704.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 87); in substance the same as Crim. Prac. Act, Stats. 1851, p. 214, § 23.  
**Citations.** Cal. 128/29.

#### **Person complained of, when to be discharged.**

§ 705. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

**Legislation § 705.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 88); in substance the same as Crim. Prac. Act, Stats. 1851, p. 214, § 24.  
**Citations.** Cal. 128/29.

#### **Security to keep the peace, when required.**

§ 706. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this state, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

**Legislation § 706.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 89); in substance the same as Crim. Prac. Act, Stats. 1851, p. 214, § 25.  
**Citations.** Cal. 128/29.



**Effect of giving or refusing to give security.**

§ 707. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Legislation § 707. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 90); in substance the same as Crim. Prac. Act, Stats. 1851, p. 215, § 26.  
Citations. Cal. 128/29.

**Person committed for not giving security, how discharged.**

§ 708. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

Legislation § 708. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 91); in substance the same as Crim. Prac. Act, Stats. 1851, p. 215, § 27.  
Citations. Cal. 128/29.

**Undertaking to be filed in clerk's office.**

§ 709. The undertaking must be filed by the magistrate in the office of the clerk of the county.

Legislation § 709. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 215, § 28.  
Citations. Cal. 128/29.

**Security, when required for assault committed in the presence of a court or magistrate.**

§ 710. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse to do so, may be committed as provided in section seven hundred and seven.

Legislation § 710. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 93); based on Crim. Prac. Act, Stats. 1851, p. 215, § 29.  
Citations. Cal. 128/29. Crim. Prac. Act: Cal. (§ 29) 8/391.

**Undertaking, when broken.**

§ 711. Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

**Legislation § 711.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 97); based on Crim. Prac. Act, Stats. 1851, p. 215, § 80.  
**Citations.** Cal. 128/29. Crim. Prac. Act: Cal. (§ 80) 8/891.

**Undertaking, when and how prosecuted.**

§ 712. Upon the district attorney's producing evidence of such conviction to the superior court of the county, the court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of the people of this state.

**Legislation § 712.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 98); in substance the same as Crim. Prac. Act, § 81, as amended by Stats. 1863, p. 158, § 8. 2. Amended by Code Amdts. 1880, p. 82, changing "county court" to "superior court."  
**Citations.** Cal. 128/29. Crim. Prac. Act: Cal. (§ 81) 8/891.

**Evidence of breach.**

§ 713. In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

**Legislation § 713.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 215, § 82.  
**Citations.** Cal. 128/29.

**Security for the peace not required, except in accordance with this chapter.**

§ 714. Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this chapter.

**Legislation § 714.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 99); based on Crim. Prac. Act, Stats. 1851, p. 215, § 83.  
**Citations.** Cal. 128/29, 82.

## CHAPTER IV.

**Police in Cities and Towns, and Their Attendance at Exposed Places.**

§ 719. Organization and regulation of the police.

§ 720. Force to preserve the peace at public meetings, when and how ordered.

**Organization and regulation of the police.**

§ 719. The organization and regulation of the police, in the cities and towns of this state, is governed by special laws.

Legislation § 719. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 100); in substance the same as Crim. Prac. Act, Stats. 1851, p. 215, § 34.

2. Amendment by Stats. 1901, p. 480; unconstitutional: See note, § 5, ante.

Police insurance and pension bill: See post, Appendix, tit. "Police."

Compensation of police: See post, Appendix, tit. "Police."

Increase of police force: See post, Appendix, tit. "Police."

Vacation for police: See post, Appendix, tit. "Police."

Hours of service of police, act regulating: See post, Appendix, tit. "Police."

Appointment of police on railroads, steamships, etc.: See post, Appendix, tit. "Police."

**Force to preserve the peace at public meetings, when and how ordered.**

§ 720. The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

Legislation § 720. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 101); in substance the same Crim. Prac. Act, Stats. 1851, p. 215, § 35.

Information of threatened offense: See ante, § 701.

Suppression of riots: See post, §§ 728 et seq.

## CHAPTER V.

## Suppression of Riots.

- § 723. Power of sheriff or other officer in overcoming resistance to process.  
§ 724. The officer to certify to court the name of the resisters, etc.  
§ 725. When governor to order out a military force to aid in executing process.  
    [Repealed.]  
§ 726. Magistrates and officers to command rioters to disperse.  
§ 727. To arrest rioters if they do not disperse.  
§ 728. Officers who may order out the military. [Repealed.]  
§ 729. Commanding officer and troops to obey the order. [Repealed.]  
§ 730. Armed force to obey orders of whom. [Repealed.]  
§ 781. Conduct of the troops. [Repealed.]  
§ 782. Governor may in certain cases declare a county in a state of insurrection.  
    [Repealed.]  
§ 783. May revoke the proclamation. [Repealed.]  
§ 784. Only national guard shall drill or parade with arms. Exception.

**Power of sheriff or other officer in overcoming resistance to process.**

§ 723. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

Legislation § 723. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 102); based on Crim. Prac. Act, Stats. 1851, p. 215, § 86, which read: "§ 86. When a sheriff or other public officer authorized to execute process shall find or have reason to apprehend that resistance shall be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished according to law."

Peace-officers: See post, § 817. See ante, §§ 697, subd. 2, 719.

Jurisdiction of police court: See Pol. Code, § 4426.

**The officer to certify to court the name of the resisters, etc.**

§ 724. The officer must certify to the court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

**Legislation § 724.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 108); based on Crim. Prac. Act, Stats. 1851, p. 216, § 37.

**§ 725.** [When governor to order out a military force to aid in executing process. Repealed.]

**Legislation § 725.** 1. Enacted February 14, 1872. 2. Repealed by Stats. 1905, p. 411.

**Magistrates and officers to command rioters to disperse.**

**§ 726.** Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

**Legislation § 726.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 106); based on Crim. Prac. Act, Stats. 1851, p. 216, § 40.

**Suppressing riots:** See ante, § 697, subd. 3.

**To arrest rioters if they do not disperse.**

**§ 727.** If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

**Legislation § 727.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 107); based on Crim. Prac. Act, Stats. 1851, p. 216, §§ 41, 42.

**Power of sheriff in overcoming resistance:** See ante, § 723.

**§ 728.** [Officers who may order out the military. Repealed.]

**Legislation § 728.** 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1880, p. 82. 3. Amendment by Stats. 1901, p. 480; unconstitutional: See note, § 5, ante. 4. Repealed by Stats. 1905, p. 411.

**Governor may call out militia to execute laws, suppress insurrection, and repel invasion:** Const., art. viii, § 1.

**§ 729.** [Commanding officer and troops to obey the order. Repealed.]

**Legislation § 729.** 1. Enacted February 14, 1872. 2. Repealed by Stats. 1905, p. 112.

**§ 730.** [Armed force to obey orders of whom. Repealed.]

**Legislation § 730.** 1. Enacted February 14, 1872. 2. Repealed by Stats. 1905, p. 412.

§ 731. [Conduct of the troops. Repealed.]

Legislation § 731. 1. Enacted February 14, 1872. 2. Amended by Stats. 1895, p. 193. 3. Repealed by Stats. 1905, p. 412.

§ 732. [Governor may in certain cases declare a county in a state of insurrection. Repealed.]

Legislation § 732. 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1880, p. 32. 3. Repealed by Stats. 1905, p. 412.

Governor is commander-in-chief: See Const., art. v, § 5.

§ 733. [May revoke the proclamation. Repealed.]

Legislation § 733. 1. Enacted February 14, 1872. 2. Repealed by Stats. 1905, p. 412.

Only national guard shall drill or parade with arms. Exception.

§ 734. It shall not be lawful for any body of men whatever, other than the regular organized national guard of this state, and the troops of the United States, to associate themselves together as a military company or organization, to drill or parade with arms in any city or town of this state, without the license of the governor thereof, which license may at any time be revoked; and provided further, that students in educational institutions where military science is a part of the course of instruction may, with the consent of the governor, drill and parade with arms in public under the superintendence of their instructor; provided, that nothing herein contained shall be construed so as to prevent benevolent or social organizations from wearing swords. And any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to arrest and punishment therefor.

Legislation § 734. Added by Stats. 1895, p. 193.

## TITLE II.

Judicial Proceedings for the Removal of Public Officers by  
Impeachment or Otherwise.

Chapter I. Impeachments. §§ 737-753.

II. Removal of Civil Officers Otherwise than by Impeachment.

§§ 758-772.

## CHAPTER I.

## Impeachments.

- § 737. Officers liable to impeachment.
- § 738. Articles, how prepared. Trial by senate.
- § 739. Articles of impeachment.
- § 740. Time of hearing. Service on defendant.
- § 741. Service, how made.
- § 742. Proceedings on failure to appear.
- § 743. Defendant, after appearance, may answer or demur.
- § 744. If demurrer is overruled, defendant must answer.
- § 745. Senate to be sworn.
- § 746. Two thirds necessary to a conviction.
- § 747. Judgment on conviction, how pronounced.
- § 748. Same.
- § 749. Nature of the judgment.
- § 750. Effect of judgment of suspension.
- § 751. Officer, when impeached, disqualified until acquitted. Governor to temporarily fill vacancy.
- § 752. Presiding officer when lieutenant-governor is impeached.
- § 753. Impeachment not a bar to indictment.

## Officers liable to impeachment.

§ 737. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice, associate justices of the supreme court, and judges of the superior courts, are liable to impeachment for any misdemeanor in office.

Legislation § 737. 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 217, § 51. 2. Amended by Code Amdts. 1880, p. 8, changing "justices of the supreme court" to "chief justice, associate justices of the supreme court." 3. Repealed by Stats. 1901, p. 480; unconstitutional: See note, § 5, ante.

Impeachment. This section is taken from the first portion of § 18 of art. iv of the state constitution.

**Articles, how prepared. Trial by senate.**

§ 738. All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the assembly, who must prepare articles of impeachment, present them at the bar of the senate, and prosecute the same. The trial must be had before the senate, sitting as a court of impeachment.

**Legislation § 738.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 218, § 52, which read: "§ 52. All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be upon oath or affirmation." 2. Repeal by Stats. 1901, p. 480; unconstitutional: See note, § 5, ante.

**Impeachment.** This section is also taken from Const. 1879, art. iv, § 17. In this respect our constitution is similar to the Federal constitution: U. S. Const., art. i, § 8.

**Articles of impeachment.**

§ 739. When an officer is impeached by the assembly for a misdemeanor in office, the articles of impeachment must be delivered to the president of the senate.

**Legislation § 739.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 118); in substance the same as Crim. Prac. Act, Stats. 1851, p. 218, § 53.

**Time of hearing. Service on defendant.**

§ 740. The senate must assign a day for the hearing of the impeachment and inform the assembly thereof. The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

**Legislation § 740.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 119); in substance the same as Crim. Prac. Act, Stats. 1851, p. 218, § 54.

**Service, how made.**

§ 741. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.



**Legislation § 741.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 120); based on Crim. Prac. Act, Stats. 1851, p. 218, § 55.  
**Sergeant-at-arms to execute process:** See Pol. Code, § 259.

**Proceedings on failure to appear.**

§ 742. If the defendant does not appear, the senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

**Legislation § 742.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 121); based on Crim. Prac. Act, Stats. 1851, p. 218, § 56.

**Defendant, after appearance, may answer or demur.**

§ 743. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

**Legislation § 743.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 122, 123); based on Crim. Prac. Act, Stats. 1851, p. 218, § 57, which read: "§ 57. When the defendant appears he must answer the articles of impeachment, which he may do, either by objecting to the sufficiency of the same or any article therein, or by denying the truth of the same."

**If demurrer is overruled, defendant must answer.**

§ 744. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the senate must render judgment of conviction against him. If he plead not guilty, the senate must, at such time as it may appoint, proceed to try the impeachment.

**Legislation § 744.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 124); based on Crim. Prac. Act, Stats. 1851, p. 218, §§ 58, 59, which read: "§ 58. If the defendant object to the sufficiency of the impeachment the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment the denial may be oral and without oath, and shall be entered upon the journal. § 59. If an objection to the sufficiency

of the impeachment be not sustained by a majority of the members of the senate who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment. If he plead guilty or refuse to plead, the senate shall render judgment of conviction against him. If he deny the matters charged the senate shall, at such time as they may appoint, proceed to try the impeachment."

#### **Senate to be sworn.**

§ 745. At the time and place appointed, and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

Legislation § 745. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 218, § 60.

#### **Two thirds necessary to a conviction.**

§ 746. The defendant cannot be convicted on impeachment without the concurrence of two thirds of the members elected, voting by ayes and noes, and if two thirds of the members elected do not concur in a conviction he must be acquitted.

Legislation § 746. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 125); in substance the same as Crim. Prac. Act, Stats. 1851, p. 219, § 62. 2. Amended by Code Amdts. 1880, p. 8, (1) omitting the article "an" before "impeachment," and (2) substituting "elected" for "present" in both instances.

#### **Judgment on conviction, how pronounced.**

§ 747. After conviction the senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the senate.

Legislation § 747. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 126); based on Crim. Prac. Act, Stats. 1851, p. 219, § 63, which read: "§ 63. After conviction the senate shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution entered upon the journals of the senate. The vote upon the passage thereof shall be taken by yeas and nays, and shall in like manner be entered upon the journal."

**Same.**

§ 748. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

Legislation § 748. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 127); in substance the same as Crim. Prac. Act, Stats. 1851, p. 219, § 64.

**Nature of the judgment.**

§ 749. The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state.

Legislation § 749. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 128); based on Crim. Prac. Act, Stats. 1851, p. 219, § 65, which read: "§ 65. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust, or profit, under this state." When enacted in 1872, (1) the words "of honor, trust, or profit," were omitted, and (2) "under" changed to "in," before "this state," at end of section. 2. Amended by Code Amdts. 1880, p. 8.  
Judgment on removal: See Const., art. iv, § 18.

**Effect of judgment of suspension.**

§ 750. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

Legislation § 750. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 219, § 66.

**Officer, when impeached, disqualified until acquitted. Governor to temporarily fill vacancy.**

§ 751. Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the governor, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law.

**Legislation § 751.** Enacted February 14, 1872; in substance the same as *Crim. Prac. Act, § 67*, as amended by *Stats. 1857, p. 17, § 1*.

**Presiding officer when lieutenant-governor is impeached.**

§ 752. If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen.

**Legislation § 752.** Enacted February 14, 1872 (*N. Y. Code Crim. Proc., § 180*); in substance the same as *Crim. Prac. Act, Stats. 1851, p. 219, § 68*.

**Impeachment not a bar to indictment.**

§ 753. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

**Legislation § 753.** Enacted February 14, 1872 (*N. Y. Code Crim. Proc., § 181*); based on *Crim. Prac. Act, Stats. 1851, p. 219, § 69*, which read: "§ 69. If the offense for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment." 2. Amended by *Code Amnts. 1880, p. 8*, adding "or information" after "indictment" in both instances.

## CHAPTER II.

### Removal of Civil Officers Otherwise than by Impeachment.

- § 758. Accusation to be presented by the grand jury.
- § 759. Form of accusation.
- § 760. Accusation of impeachment to be transmitted to the district attorney, and copy served on the defendant.
- § 761. Proceedings if defendant does not appear.
- § 762. Defendant may object to or deny the accusation.
- § 763. Form of objection.
- § 764. Manner of denial.
- § 765. If objections overruled, defendant must answer.
- § 766. Proceedings upon plea of guilty, refusal to answer or deny.
- § 767. Trial by jury.
- § 768. State and defendant entitled to process for witnesses.
- § 769. Judgment upon conviction, and its form.
- § 770. Appeal, how taken. Defendant to be suspended and vacancy filled.
- § 771. Proceedings for the removal of a district attorney.
- § 772. Removal of public officers by summary proceedings before superior courts.

**Accusation to be presented by the grand jury.**

§ 758. An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

**Legislation § 758.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 219, § 70. 2. Amendment by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 75/151; 85/591; 97/388; 107/289; 114/553; 119/232; 145/86, 87, 88; 147/528, 529, 530, 532, 534; 151/719. App. 2/454, 455, 456, 460; 6/218, 219, 221.

**Removal of civil officers otherwise than by impeachment.** Under this section, which is taken from art. iv, § 18, of the state constitution, all officers, other than those named in § 737 as liable to impeachment, are liable to be tried for misconduct in office, and if found guilty, removed therefrom. The constitutional provision just referred to reads: "All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide."

**Form of accusation.**

§ 759. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

**Legislation § 759.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 219, § 71.

**Citations.** App. 6/218, 219, 221.

**Accusation of impeachment to be transmitted to the district attorney, and copy served on the defendant.**

§ 760. The accusation must be delivered by the foreman of the grand jury to the district attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the superior court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court.

**Legislation § 760.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 219, § 72. 2. Amended by Code Amdts. 1880, p. 82, (1) in first sentence, substituting (a) "superior court" for "district court," and (b) "at a time mentioned in the notice" for "at its next term"; (2) in final sentence, omitting "district" before "court."

**Citations.** App. 2/454, 455.

**Proceedings if defendant does not appear.**

§ 701. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

**Legislation § 701.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 219, § 73.

**Defendant may object to or deny the accusation.**

§ 702. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

**Legislation § 702.** Enacted February 14, 1872; in exact language of Crim. Prac. Act, Stats. 1851, p. 220, § 74.

**Citations.** Cal. 145/86, 88. App. 2/454, 455.

**Form of objection.**

§ 703. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

**Legislation § 703.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 75.

**Citations.** Cal. 145/86. App. 2/454, 455.

**Manner of denial.**

§ 704. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

**Legislation § 704.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 76.

**If objections overruled, defendant must answer.**

§ 705. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

**Legislation § 705.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 77.

**Proceedings upon plea of guilty, refusal to answer or deny.**

§ 706. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against

him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

**Legislation § 766.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 78.

**Citations.** App. 6/218, 219, 221.

#### **Trial by jury.**

§ 767. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

**Legislation § 767.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 79.

**Citations.** App. 2/454, 455; 6/218, 219, 221. Crim. Prac. Act: Cal. (§ 79) 41/652.

#### **State and defendant entitled to process for witnesses.**

§ 768. The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an indictment.

**Legislation § 768.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 220, § 80.

#### **Judgment upon conviction, and its form.**

§ 769. Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

**Legislation § 769.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 81, as amended by Stats. 1863, p. 158, § 4, which read: "§ 81. Upon a conviction, the court shall immediately, or at such other time as the court may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of such removal." 2. Amendment by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante.

**Citations.** App. 2/454, 455; 6/218, 219, 221.

#### **Appeal, how taken. Defendant to be suspended and vacancy filled.**

§ 770. From a judgment or decree of removal from office under any provision of this chapter, an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action but until such judgment is reversed, the defendant is suspended from

within thirty days from the entry of the judgment, unless within thirty days there shall be filed in the office of the clerk of the court in which the conviction was had, a certificate of a judge of the superior court that in his opinion there is probable cause for the appeal. If a bill of exceptions is not settled in time to be used upon an application for such a certificate or within twenty days after such judgment is entered, the error relied upon may be presented to such judge in any manner satisfactory to such judge. If no such certificate be filed within thirty days the office must pending the appeal be filled as in case of a vacancy. Appeals taken under this section shall be entitled in the appellate court to priority in hearing over all cases except such as have been advanced upon its calendar by special order of such appellate court.

**Legislation § 770.** 1. Enacted February 14, 1872; based on *Crim. Prac. Act*, Stats. 1851, p. 220, § 82, which read: "§ 82. From a judgment of removal an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment be reversed the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of vacancy." When enacted in 1872, § 770 read: "770. From a judgment of removal an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action; but until such judgment is reversed the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy." 2. Amended by Stats. 1905, p. 251.

**Citations.** Cal. 88/47, 48; 96/157; 107/289; 151/719. App. 2/454, 455; 8/754.

#### **Proceedings for the removal of a district attorney.**

§ 771. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the superior court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings.

**Legislation § 771.** 1. Enacted February 14, 1872; based on *Crim. Prac. Act*, Stats. 1851, p. 220, § 83, which read: "§ 83. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered to the district judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the district attorney of an ad-



joining county, and require him to conduct the proceedings." 2. Amended by Code Amdts. 1880, p. 82, substituting "a judge of the superior court of the county" for "the district judge of the district."

Citations. Cal. 151/719. App. 2/454.

**Removal of public officers by summary proceedings before superior courts.**

§ 772. When an accusation in writing, verified by the oath of any person, is presented to a superior court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases.

**Legislation § 772.** 1. Enacted February 14, 1872; in substance the same as Stats. 1858, p. 41, § 4. 2. Amended by Code Amdts. 1880, p. 83, substituting (1) "accusation" for "information" in the four instances; (2) "superior court" for "district court"; (3) "accused" for "informed against" in the two instances. 3. Repeal by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 50/646; 52/628; 56/860; 57/854; 68/325; 75/151; 83/47, 48; 85/643, 644, 645, 647; 97/883; 98/588, 589, 590; 107/286, 287, 288, 289; 108/662; 110/656; 111/239, 240, 242; 114/476, 552; 119/282; 122/298; 130/184, 186; 145/87, 45, 478; 147/27, 528, 529, 532; 151/719. App. 2/455, 456; 3/481, 482, 483, 484; 6/218; 8/751, 758, 754, 755.

## TITLE III.

~~CRIMINAL~~ Criminal Actions Prosecuted by Indictment,  
or the Commitment, Inclusive.

- Local Jurisdiction of Public Offenses. §§ 777-795.
- Time of Commencing Criminal Actions. §§ 799-803.
- The Information. §§ 806-810.
- The Warrant of Arrest. §§ 811-829.
- Arrest, by Whom and how Made. §§ 834-851.
- Breaking after an Escape or Rescue. §§ 854, 855.
- Examination of the Case, and Discharge of the Defendant,  
or Holding Him to Answer. §§ 858-883.

## CHAPTER I.

## Local Jurisdiction of Public Offenses.

- § 777. Jurisdiction of offenses committed in this state.
- § 778. When the offense is commenced without, but consummated within this state.
- § 779. Performance of an act in this state culminating in a crime in another state.
- § 780. Non-resident aiding in a crime in this state.
- § 781. When an inhabitant of this state is concerned in a duel out of the same, and a party wounded dies therein.
- § 782. When an inhabitant leaves the state to evade the statute against dueling or challenges to fight.
- § 783. When an offense is committed partly in one county and partly in another.
- § 784. When committed on the boundary, etc., of two or more counties.
- § 785. Offenses on ships or cars, jurisdiction of.
- § 786. Kidnaping or abduction.
- § 787. Jurisdiction of an indictment for bigamy or incest.
- § 788. When property is feloniously taken in one county and brought into another.
- § 789. Jurisdiction of criminal action for escaping from prison.
- § 790. Jurisdiction of a criminal action for treason committed out of the state.
- § 791. Stealing property in another state and bringing it into this state.
- § 792. Jurisdiction of a criminal action for murder, etc., where injury was inflicted in one county and party dies out of that county.
- § 793. Of an indictment against an accessory.

- § 792. Jurisdiction in cases of principals who are not present, etc., at commission of principal offense.
- § 798. Conviction or acquittal in another state a bar, where the jurisdiction is concurrent.
- § 794. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.
- § 795. Jurisdiction in certain cases.

#### **Jurisdiction of offenses committed in this state.**

§ 777. Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States; and except as herein otherwise provided, the jurisdiction of every public offense is in the county wherein it is committed.

**Legislation § 777.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 220, § 84, which read: "§ 84. Every person, whether an inhabitant of this or any other state, or country, or of a territory or district of the United States, shall be liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States." 2. Amended by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 692, adding the exception at end of section, after "United States"; the code commissioner saying, "The amendment declares that the jurisdiction of any public offense not otherwise specially provided for is within the county where it was committed. Although this has always been understood to be the law, the code contained no express declaration upon the subject."

**Jurisdiction of police court:** See Pol. Code, § 4426.

#### **When the offense is commenced without, but consummated within this state.**

§ 778. When the commission of a public offense, commenced without the state, is consummated within its boundaries, the defendant is liable to punishment therefor in this state, though he was out of the state at the time of the commission of the offense charged. If he consummated it in this state, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

**Legislation § 778.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 221, § 85, which read: "§ 85. When the commission of a public offense commenced without the state, is consummated within the boun-

daries thereof, the defendant shall be liable to punishment in this state though he were without the state at the time of the commission of the offense charged: Provided, he consummated the offense through the intervention of an innocent or guilty agent without this state, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offense is consummated."

**Performance of an act in this state culminating in a crime in another state.**

§ 778a. Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state.

**Legislation § 778a.** 1. Addition by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 692; the code commissioner saying, "The section is designed to provide for the punishment of persons who in this state do an act culminating in the commission of a crime in another state."

**Non-resident aiding in a crime in this state.**

§ 778b. Every person who, being out of this state, causes, aids, advises, or encourages any person to commit a crime within this state, and is afterwards found within this state, is punishable in the same manner as if he had been within this state when he caused, aided, advised, or encouraged the commission of such crime.

**Legislation § 778b.** 1. Addition by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 692; the code commissioner saying, "The object of this section is to provide for the punishment of persons who, being out of the state, encourage the commission of crimes within this state, and are themselves afterward found within this state."

**Non-resident aiding in commission of crime in this state:** See ante, § 27.

**When an inhabitant of this state is concerned in a duel out of the same, and a party wounded dies therein.**

§ 779. When an inhabitant or resident of this state, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the jurisdiction of this state, and in the duel a wound is inflicted upon a person, whereof he dies in this state, the jurisdiction of the offense is in the county where the death happens.

**Legislation § 779.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 221, § 86, which read: "§ 86. When an inhabitant or resident of this state shall, by any previous appointment or engagement, fight a duel or be concerned as a second therein without the jurisdiction of this state, and in such duel a wound shall be inflicted upon any person whereof he shall die within the state, the jurisdiction of the offense shall be in the county where the death shall happen."

**When an inhabitant leaves the state to evade the statute against dueling or challenges to fight.**

§ 780. When an inhabitant of this state leaves the same for the purpose of evading the operation of the provisions of the code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

**Legislation § 780.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 183).

**Leaving state to evade statute against dueling:** See ante, § 231.

**When an offense is committed partly in one county and partly in another.**

§ 781. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

**Legislation § 781.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 184); in substance the same as Crim. Prac. Act, Stats. 1851, p. 221, § 87.  
**Citations.** Cal. 51/379. Crim. Prac. Act: Cal. (§ 87) 22/183.

**When committed on the boundary, etc., of two or more counties.**

§ 782. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

**Legislation § 782.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 185); in substance the same as Crim. Prac. Act, Stats. 1851, p. 221, § 88.  
**Citations.** Cal. 55/233; 59/459.

**Offenses on ships or cars, jurisdiction of.**

§ 783. When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein,

in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this state, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates.

**Legislation § 783.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 186, 187); based on Crim. Prac. Act, Stats. 1851, p. 221, § 89, which read: "§ 89. When an offense is committed within this state on board a vessel navigating a river, bay, or slue, [slough,] or lying therein in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate." 2. Amended by Code Amdts. 1875-76, p. 116, adding the final clause, beginning "and when the offense is committed in this state." Citations. Cal. 108/510; 138/624; 138/146. Crim. Prac. Act: Cal. (§ 89) 7/898.

### **Kidnaping or abduction.**

§ 784. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to service;

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child;

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed has, in the commission of the offense, been taken, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

**Legislation § 784.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 221, § 90, which read: "§ 90. The jurisdiction of an indictment for the crime of forcibly stealing, taking, or arresting any man, woman, or child in this state, and carrying him or her into any other county, state, or territory, or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this state, without having established a claim according to the laws of the United States, or for hiring, persuading, enticing, decoying, or seducing by false promises, misrepresentations, and the like, any negro, mulatto, or colored person to go out of this state, to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use or the use of another, without the free will and consent of such negro, mulatto, or colored person, shall be, in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may in the prosecution of the offense have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in, or being accessory to the commission of the offense, or in abetting the parties therein concerned." 2. Amended by Code Amdts. 1880, p. 11, in introductory paragraph, substituting "a criminal action" for "an indictment." 3. Amendment by Stats. 1901, p. 481; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 692, (1) in subds. 1 and 2, omitting the conjunction "or" from the end of the subdivisions; (2) in subd. 3, changing "twenty-five years" to "eighteen years"; (3) in final paragraph, changing "may, in the commission of the offense, have been brought" to "has in the commission of the offense, been taken."

**Citations.** Cal. 141/546, 547.

**Enticing away children:** See ante, § 278.

**Enticing away unmarried female:** See ante, §§ 267, 268.

**Kidnaping for purpose of slavery:** See ante, § 207.

**Abducting or kidnaping of infant for prostitution:** See ante, § 267.

#### **Jurisdiction of an indictment for bigamy or incest.**

§ 785. When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

**Legislation § 785.** Enacted February 14, 1872; in substance the same as Crim: Prac. Act, Stats. 1851, p. 222, § 91.

#### **When property is feloniously taken in one county and brought into another.**

§ 786. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before

the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

**Legislation § 786.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 222, § 92, which read: "§ 92. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense shall be in either county. But if at any time before the conviction of the defendant in the latter he be indicted in the former country, [county,] the sheriff of the latter county shall, upon demand, deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, indorsed thereon by the sheriff of the former county, of the body of the offender, and shall on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender."

**Citations.** Cal. 74/95; 91/27; 106/640; 184/886. Crim. Prac. Act: Cal. (§ 92) 29/422; 40/658.

**Bringing stolen property into state:** See ante, § 27, subd. 2, § 497; post, § 789.

#### **Jurisdiction of criminal action for escaping from prison.**

§ 787. The jurisdiction of a criminal action for escaping from prison is in any county of the state.

**Legislation § 787.** 1. Enacted February 14, 1872; based on Stats. 1855, p. 203, § 1. 2. Amended by Code Amdts. 1880, p. 11, substituting "a criminal action" for "an indictment."

#### **Jurisdiction of a criminal action for treason committed out of the state.**

§ 788. The jurisdiction of a criminal action for treason, when the overt act is committed out of the state, is in any county of the state.

**Legislation § 788.** 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 231, § 17. 2. Amended by Code Amdts. 1880, p. 11, substituting "a criminal action" for "an indictment."

#### **Stealing property in another state and bringing it into this state.**

§ 789. The jurisdiction of a criminal action for stealing or embezzling, in any other state, the property of another, or receiving it knowing it to have been stolen or embezzled, and bringing the same into this state, is in any county into or through which such stolen or embezzled property has been brought.

**Legislation § 789.** 1. Enacted February 14, 1872; based on Field Draft, § 600, N. Y. Pen. Code, § 540. 2. Amended by Code Amdts. 1880, p. 11,



substituting "a criminal action" for "an indictment." 3. Amendment by Stats. 1901, p. 482; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 698, adding (1) "or embezzling" after "stealing," and (2) "or embezzled" after "stolen" in both instances.

Citations. Cal. 91/27, 28; 122/74.

Receiving stolen or embezzled property out of state: See ante, § 497.

Crime committed by person out of state: Ante, §§ 27, subd. 2, 497.

Taking stolen property from one county to another: Ante, § 786.

**Jurisdiction of a criminal action for murder, etc., where injury was inflicted in one county and party dies out of that county.**

§ 790. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county or out of the state, is in the county where the injury was inflicted.

Legislation § 790. 1. Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 232, § 28. 2. Amended by Code Amdts. 1880, p. 11, substituting "a criminal action" for "an indictment."

Bringing stolen property into state: See ante, §§ 27, 497.

**Of an indictment against an accessory.**

§ 791. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Legislation § 791. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 222, § 98, which read: "§ 98. In the case of an accessory before or after the fact in the commission of a public offense, the jurisdiction shall be in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county." The code commissioners say: "The distinction between an accessory before the fact and the principal being abolished by this code, and the word 'accessory' substituted for 'accessory after the fact,' this section has been modified to adapt it to the changes made."

Citations. Crim. Prac. Act: Cal. (§ 98) 27/841.

Accessories: See ante, §§ 30, 81, 82.

**Jurisdiction in cases of principals who are not present, etc., at commission of principal offense.**

§ 792. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county

it would be under this code if he were so present and aiding and abetting therein.

**Legislation § 792.** 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1880, p. 11, substituting "a criminal action" for "an indictment."

**Conviction or acquittal in another state a bar, where the jurisdiction is concurrent.**

§ 793. When an act charged as a public offense is within the jurisdiction of another state or country, as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state.

**Legislation § 793.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 189); based on Crim. Prac. Act, Stats. 1851, p. 222, § 94, which read: "§ 94. When an act charged as a public offense is within the jurisdiction of another state or territory as well as of this state, a conviction or acquittal thereof in such state or territory shall be a bar to a prosecution therefor in this state."

**Foreign conviction or acquittal:** See ante, § 656; post, § 794.

**Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.**

§ 794. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

**Legislation § 794.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 140); based on Crim. Prac. Act, Stats. 1851, p. 222, § 95.

**Foreign conviction or acquittal:** See ante, §§ 656, 668.

**Jurisdiction in certain cases.**

§ 795. The jurisdiction of a violation of sections four hundred and twelve, four hundred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is, in any county:

First. In which any act is done towards the commission of the offense; or,

Second. Into, out of, or through which the offender passed to commit the offense; or,

Third. Where the offender is arrested.

**Legislation § 795.** Added by Code Amdts. 1873-74, p. 466.

## CHAPTER II.

## Time of Commencing Criminal Actions.

- § 799. No limitation in certain crimes.
- § 800. Limitation of three years in all other felonies.
- § 801. Limitation of one year in misdemeanors.
- § 802. Exception when defendant is out of the state.
- § 803. Indictment found, when presented and filed.

**No limitation in certain crimes.**

§ 799. There is no limitation of time within which a prosecution for murder, the embezzlement of public moneys, and the falsification of public records must be commenced. Prosecution for murder may be commenced at any time after the death of the person killed, and for the embezzlement of public money or the falsification of public records, at any time after the discovery of the crime.

Legislation § 799. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 141); in substance the same as Crim. Prac. Act, Stats. 1851, p. 222, § 96. When enacted in 1872, § 799 read: "799. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed." 2. Amended by Stats. 1891, p. 192.

Citations. App. 5/158. Crim. Prac. Act: Cal. (§ 96) 44/97.

**Limitation of three years in all other felonies.**

§ 800. An indictment for any other felony than murder, the embezzlement of public money, or the falsification of public records, must be found, or an information filed, within three years after its commission.

Legislation § 800. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 142); in exact language of Crim. Prac. Act, Stats. 1851, p. 222, § 97. When enacted in 1872, § 800 read: "800. An indictment for any other felony than murder must be found within three years after its commission." 2. Amended by Code Amdts. 1880, p. 12, inserting "or an information filed" after "must be found." 3. Amended by Stats. 1891, p. 193.

Citations. Cal. 85/88. App. 5/155. Crim. Prac. Act: Cal. (§ 97) 44/97, 99.

**Limitation of one year in misdemeanors.**

§ 801. An indictment for any misdemeanor must be found or an information filed within one year after its commission.

**Legislation § 801.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 142); in exact language of Crim. Prac. Act, Stats. 1851, p. 222, § 98. 2. Amended by Code Amdts. 1880, p. 12, inserting "or an information filed" after "must be found."

**Citations.** Cal. 62/142; 77/359; 84/80; 85/87, 88; 124/361; 137/268, 269; 188/585.

#### **Exception when defendant is out of the state.**

§ 802. If, when the offense is committed, the defendant is out of the state, the indictment may be found or an information filed within the term herein limited after his coming within the state, and no time during which the defendant is not an inhabitant of, or usually resident within this state, is part of the limitation.

**Legislation § 802.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 143); in substance the same as Crim. Prac. Act, Stats. 1851, p. 222, § 99. 2. Amended by Code Amdts. 1880, p. 12, (1) inserting "or an information filed" after "may be found," and (2) substituting "this state" for "the state."

**Citations.** Cal. 77/359; 84/80; 85/89. App. 5/155, 158.

#### **Indictment found, when presented and filed.**

§ 803. An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

**Legislation § 803.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 144); in substance the same as Crim. Prac. Act, Stats. 1851, p. 222, § 100.

### **CHAPTER III.**

#### **The Information.**

§ 806. Complaint defined.

§ 807. Magistrate defined.

§ 808. Who are magistrates.

§ 809. Filing information after examination and commitment.

§ 810. Information, when lost, copy may be filed.

#### **Complaint defined.**

§ 806. The complaint is the allegation in writing made to a court or magistrate that a person has been guilty of some designated offense.

**Legislation § 808.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 145); based on Crim. Prac. Act, Stats 1851, p. 223, § 101, which read: "§ 101. The complaint is the allegation made to a magistrate that a person has been guilty of some designated offense." 2. Amended by Code Amdts. 1880, p. 12, (1) substituting "complaint" for "information," and (2) adding "court or" before "magistrate."

Citations. Cal. 65/615; 111/661.

Information of threatened offense: See ante, § 701.

#### **Magistrate defined.**

§ 807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

**Legislation § 807.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 146); in exact language of Crim. Prac. Act, Stats. 1851, p. 223, § 102. The code commissioners say: "The definition of the term 'magistrate,' as used throughout this code, is here given, to save unnecessary repetition of the official names of the officers who come within this description."

Citations. Cal. 68/503; 115/54. App. 5/424.

#### **Who are magistrates.**

§ 808. The following persons are magistrates:

1. The justices of the supreme court;
2. The judges of the superior courts;
3. Justices of the peace;
4. Police magistrates in towns or cities.

**Legislation § 808.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 147); based on Crim. Prac. Act, Stats. 1851, p. 223, § 103, which read: "§ 103. The following persons are magistrates: 1st. The justices of the supreme court; 2d. The district judges; 3d. The county judges; 4th. Justices of the peace; 5th. The recorders of cities; and, 6th. The mayors of cities, upon whom are conferred by law the powers of justices of the peace." When enacted in 1872, § 808 read: "808. The following persons are magistrates: 1. The justices of the supreme court; 2. The district judges; 3. The county judges; 4. The judge of the municipal criminal court of San Francisco; 5. Justices of the peace; 6. Police magistrates in towns or cities." 2. Amended by Code Amdts. 1880, p. 7.

Citations. Cal. 51/376; 68/503; 115/54; 118/78; 145/743; 154/743. App. 5/424.

#### **Filing information after examination and commitment.**

§ 809. When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this code, it

shall be the duty of the district attorney, within thirty days thereafter, to file in the superior court of the county in which the offense is triable an information charging the defendant with such offense. The information shall be in the name of the people of the state of California, and subscribed by the district attorney, and shall be in form like an indictment for the same offense.

**Legislation § 809.** Added by Code Amdts. 1880, p. 12.

**Citations.** Cal. 56/284; 57/561; 65/108; 66/895, 664; 67/232, 234; 68/508, 579; 85/88; 91/648; 108/663; 109/450; 118/284; 117/656; 142/13, 598; 143/221; 153/889. App. 5/552, 555, 556; 8/755.

**Information, form of:** See post, § 951.

**Time to file information:** See post, § 1382.

#### **Information, when lost, copy may be filed.**

§ 810. If the information or other pleading in any criminal action now pending, or which may be hereafter commenced, has heretofore been lost or destroyed, or shall hereafter be lost or destroyed, the court must upon the application of the attorney-general, district attorney, or the defendant, order a copy of the information or other pleading to be filed and substituted for the original, and when filed and substituted, as provided in this section, it shall have the same force and effect as if it were the original information or other pleading.

**Legislation § 810.** Added by Stats. 1907, p. 889.

### **CHAPTER IV.**

#### **The Warrant of Arrest.**

- § 811. Examination of the prosecutor and his witnesses upon the information.
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- § 826. Proceedings where defendant is taken before another magistrate.
- § 827. Proceedings for offenses triable in another county.
- § 828. Duty of officer.
- § 829. Admission to bail.

#### **Examination of the prosecutor and his witnesses upon the information.**

§ 811. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Legislation § 811. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 148); in substance the same as Crim. Prac. Act, Stats. 1851, p. 223, § 104.  
 2. Amendment by Stats. 1901, p. 482; unconstitutional: See note, § 5, ante.  
 Citations. Cal. 54/108; 74/166; 91/25; 96/817; 121/531; 131/578; 133/383; 143/218; 144/61. App. 5/424.

Magistrates, who are: See ante, § 808.

As to examination on commission, see post, §§ 1349 et seq.

#### **Depositions, what to contain.**

§ 812. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

Legislation § 812. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 149); in exact language of Crim. Prac. Act, Stats. 1851, p. 223, § 105.  
 Citations. Cal. 74/166; 91/25; 133/383; 143/218.

#### **When warrant may issue.**

§ 813. If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

Legislation § 813. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 150); in substance the same as Crim. Prac. Act, Stats. 1851, p. 223, § 106.  
 Citations. Cal. 74/166; 91/25; 143/218.

Warrant of arrest, issuance of: See post, § 1427.

Pen. Code—27

**Form of warrant.**

§ 814. A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of —.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman of said State, or of the County of —:

Information on oath having been this day laid before me, by A. B., that the crime of — (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above-named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at —, this — day of —, eighteen [nineteen] —.

Legislation § 814. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 151); in substance the same as Crim. Prac. Act, Stats. 1851, p. 223, § 107.

Citations. Cal. 59/355. Crim. Prac. Act: Cal. (§ 107) 19/184.

Form of warrant of arrest: See post, § 1427.

Before whom to be taken: See post, § 824.

**Name or description of the defendant in the warrant, and statement of the offense.**

§ 815. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate, with his name of office.

Legislation § 815. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 152); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 108.

Citations. Cal. 59/355.

**Warrant to be directed to and executed by peace-officer.**

§ 816. The warrant must be directed to and executed by a peace-officer.

Legislation § 816. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 153); in exact language of Crim. Prac. Act, Stats. 1851, p. 224, § 109.

**Who are peace-officers.**

§ 817. A peace-officer is a sheriff of a county, ~~or~~ constable, marshal, or policeman of a township, city, or town.



**Legislation § 817.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 154); based on Crim. Prac. Act, Stats. 1851, p. 224, § 110, which read: "§ 110. Peace-officers are sheriffs of counties, and constables, marshals, and policemen, of cities and towns respectively."

Citations. Cal. 120/268.

**To what peace-officers warrants are to be directed.**

§ 818. If a warrant is issued by a justice of the supreme court, or judge of a superior court, it may be directed generally to any sheriff, constable, marshal, or policeman in the state, and may be executed by any of those officers to whom it may be delivered.

**Legislation § 818.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 155); based on Crim. Prac. Act, Stats. 1851, p. 224, § 111, which read: "§ 111. If a warrant be issued by a justice of the supreme court, district judge, or county judge, it may be directed generally to any sheriff, constable, marshal, or policeman, in this state, and may be executed by any of those officers to whom it may be delivered." When enacted in 1872, § 818 read: "§ 18. If a warrant is issued by a justice of the supreme court, district judge, county judge, or judge of the municipal criminal court of San Francisco, it may be directed generally to any sheriff, constable, marshal, or policeman in the state, and may be executed by any of those officers to whom it may be delivered." 2. Amended by Code Amdts. 1880, p. 38.

Citations. Cal. 54/108; 82/190.

**Same; and when and how executed in another county.**

§ 819. If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of ——" (naming the county.)

**Legislation § 819.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 156); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 112.

Citations. Cal. 54/108; 82/190.

**Indorsement on the warrant for service in another county, how and upon what proof to be made.**

§ 820. The indorsement mentioned in the last section cannot, however, be made unless the warrant of arrest be accompanied with a

certificate of the clerk of the county where such warrant was issued, under the seal of the superior court thereof, as to the official character of the magistrate, or, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued.

**Legislation § 820.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 157); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 118.  
2. Amended by Code Amdts. 1880, p. 33, in first sentence, changing "county court" to "superior court."

**Defendant to be taken before the magistrate issuing the warrant, etc.**

§ 821. If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eight hundred and twenty-four.

**Legislation § 821.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 158); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 116.  
**Citations.** Cal. 54/103; 65/217; 67/232. App. 1/654.

**Defendant must be taken before magistrate who issued warrant:** Post, § 824.

**Defendant to be taken before nearest magistrate:** See post, §§ 822, 827, 828.

**Defendant arrested for misdemeanor in another county, to be admitted to bail.**

§ 822. If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

**Legislation § 822.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 159); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 115.  
**Citations.** Cal. 54/103; 67/232.

**Defendant to be taken before what magistrate:** See ante, § 821; post, §§ 827, 828.

**Proceedings on taking bail from the defendant in such cases.**

§ 823. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the

officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

**Legislation § 823.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 160); in substance the same as Crim. Prac. Act, Stats. 1851, p. 224, § 116. Citations. App. 1/654.

**Discharge on allowance of bail:** See post, §§ 1281, 1288.

**Proceedings on giving bail out of county:** See post, § 984.

**When bail is not given. When magistrate who issued warrant cannot act.**

§ 824. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon indorsed and subscribed by him.

**Legislation § 824.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 161, 164); based on Crim. Prac. Act, Stats. 1851, p. 224, §§ 117, 118, which read: "§ 117. If on the admission of the defendant to bail, as provided in section one hundred and fifteen, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section. § 118. When by the preceding sections of this chapter the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant with his return, indorsed and subscribed by him."

**Citations.** Cal. 54/108; 65/217. App. 1/654.

**Right of attorney to visit prisoner.**

§ 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and after such arrest, any attorney at law entitled to practice in the courts of record of California, may at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow an attorney to visit the pris-

oner when proper application is made therefor shall forfeit and pay to the party aggrieved the sum of five hundred dollars, to be recovered by action in any court of competent jurisdiction.

**Legislation § 825.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 165); in exact language of Crim. Prac. Act, Stats. 1851, p. 225, § 119. When enacted in 1872, § 825 read: "825. The defendant must in all cases be taken before the magistrate without unnecessary delay." 2. Amended by Code Amdts. 1880, p. 80, adding, at end of section, "and any attorney at law entitled to practice in courts of record of California, may, at the request of the prisoner after such arrest, visit the person so arrested." 3. Amended by Stats. 1907, p. 888.

Defendant to be taken before nearest magistrate without delay: See post, § 849.

Delay in taking before magistrate, a misdemeanor: See ante, § 145.

#### **Proceedings where defendant is taken before another magistrate.**

§ 826. If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

**Legislation § 826.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 166); based on Crim. Prac. Act, Stats. 1851, p. 225, § 120, which read: "§ 120. If the defendant be brought before a magistrate in the same county other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such magistrate, or if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew."

Citations. Cal. 65/217. Crim. Prac. Act: Cal. (§ 120) 19/135.

#### **Proceedings for offenses triable in another county.**

§ 827. When an information is laid before a magistrate of the commission of a public offense triable in another county of the state, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Legislation § 827. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 225, § 121.

Defendant to be taken before what magistrate: See ante, §§ 821, 822; post, § 828.

#### Duty of officer.

§ 828. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

Legislation § 828. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 164); in substance the same as Crim. Prac. Act, Stats. 1851, p. 225, § 122.

Defendant to be taken before what magistrate: See ante, §§ 821, 824, 827.

#### Admission to bail.

§ 829. If the offense charged in the warrant issued pursuant to section eight hundred and twenty-seven is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions, and undertaking, to the clerk of the court in which the defendant is required to appear.

Legislation § 829. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 164); in substance the same as Crim. Prac. Act, Stats. 1851, p. 225, § 123.

## CHAPTER V.

### Arrest, by Whom and how Made.

§ 834. Arrest defined. By whom made.

§ 835. How an arrest is made and what restraint allowed.

§ 836. Arrests by peace-officers.

§ 837. Arrests by private persons.

§ 838. Magistrates may order arrest.

§ 839. Persons making arrest may summon assistance.

§ 840. Arrests, when may be made. Without warrant, when.

§ 841. Arrest, how made.

§ 842. Warrant must be shown, when.

§ 843. What force may be used.

§ 844. Doors and windows may be broken, when.

§ 845. Same.

§ 846. Weapons may be taken from persons arrested.

§ 847. Duty of a private person who has made an arrest.

§ 848. Duty of officer arresting with warrant.

§ 849. Person arrested without a warrant to be taken before a magistrate. Information to be filed.

§ 850. Arrest by telegraph.

§ 851. Same.

Code commissioners' note to Chapter V. This chapter "is founded upon §§ 124-148, inclusive, of the Criminal Practice Act of this state, and includes substantially chapters v, vi, and vii of title III, part II, of the Penal Code, as first published by this commission."

#### Arrest defined. By whom made.

§ 834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person.

Legislation § 834. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 167, 168); based on Crim. Prac. Act, Stats. 1851, p. 225, §§ 124, 125, which read: "§ 124. Arrest is the taking of a person into custody that he may be held to answer for a public offense. § 125. An arrest may be either: 1st. By a peace-officer under a warrant. 2d. By a peace-officer without a warrant; or, 3d. By a private person."

#### How an arrest is made and what restraint allowed.

§ 835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Legislation § 835. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 171, 172); in substance the same as Crim. Prac. Act, Stats. 1851, p. 226, §§ 128, 129.

Arrest, how made: See post, §§ 841, 842.

#### Arrests by peace-officers.

§ 836. A peace-officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it,

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

**Legislation § 836.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 168, 177); based on Crim. Prac. Act, Stats. 1851, p. 226, §§ 134, 136, which read: "§ 134. A peace-officer may, without a warrant, arrest a person: 1st. For a public offense, committed or attempted in his presence. 2d. When the person arrested has committed a felony, although not in his presence. 3d. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. 4th. On a charge made upon a reasonable cause of the commission of a felony by the party arrested." "§ 136. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony had not been committed." 2. Amendment by Stats. 1901, p. 482; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 104/89; 120/268; 152/45.

**Refusing to arrest:** Ante, § 142.

**Warrant, by whom executed:** Ante, § 816.

**Arrest under warrant, duty of officer:** Post, § 848.

**Arrest without warrant, duty of officer:** Post, § 849.

**Peace-officers:** Ante, § 817.

### Arrests by private persons.

§ 837. A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

**Legislation § 837.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 168, 188); based on Crim. Prac. Act, Stats. 1851, p. 226, §§ 125 (q.v., ante, Legislation § 834) and 140, the latter reading. "§ 140. A private person may arrest another: First, for a public offense committed or attempted in his presence. Second, when the person arrested has committed a felony, although not in his presence. Third, when a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it."

**Citations.** Cal. 68/424; 108/57; 137/322.

**Magistrates may order arrest.**

§ 838. A magistrate may orally order a peace-officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Legislation § 838. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 182); based on Crim. Prac. Act, Stats. 1851, p. 227, § 189, which read: "§ 189. When a public offense is committed in the presence of a magistrate he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest."

Magistrates, who are: Ante, § 808.

**Persons making arrest may summon assistance.**

§ 839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

Legislation § 839. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 169); based on Crim. Prac. Act, Stats. 1851, p. 226, § 126, which read: "§ 126. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution."

**Arrests, when may be made. Without warrant, when.**

§ 840. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, except when the offense is committed in the presence of the arresting officer.

Legislation § 840. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 170); in substance the same as Crim. Prac. Act, Stats. 1851, p. 226, § 127.  
2. Amendment by Stats. 1901, p. 482; unconstitutional: See note, § 5, ante.  
3. Amended by Stats. 1905, p. 698, adding the exception at the end of the section; the code commissioner saying, "The purpose of the amendment is to authorize an officer to arrest without a warrant at night-time for a misdemeanor committed in his presence."

Citations. Cal. 152/45.

**Arrest, how made.**

§ 841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an



offense, or is pursued immediately after its commission, or after an escape.

Legislation § 841. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 173); based on Crim. Prac. Act, Stats. 1851, p. 227, §§ 137, 141.

Arrest, how made: See ante, § 835.

**Warrant must be shown, when.**

§ 842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

Legislation § 842. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 173); based on Crim. Prac. Act, Stats. 1851, p. 226, § 130, which read: "§ 130. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant if required."

**What force may be used.**

§ 843. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

Legislation § 843. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 174); based on Crim. Prac. Act, Stats. 1851, p. 226, § 131, which read: "§ 131. If after notice of intention to arrest the defendant, he either flee or forcibly resists, the officer may use all necessary means to effect the arrest."

**Doors and windows may be broken, when.**

§ 844. To make an arrest, a private person, if the offense be a felony, and in all cases a peace-officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

Legislation § 844. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 175); based on Crim. Prac. Act, Stats. 1851, p. 226, §§ 132, 135, which read: "§ 132. The officer may break open any outer or inner door or window of a dwelling-house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance." "§ 135. To make an arrest, as provided in the last section, [§ 134; q.v., ante, Legislation § 836,] the officer may break open any outer or inner door or window of a dwelling-house if, after notice of his office and purpose, he be refused admittance." When enacted in 1872, § 844 read: "844. To make an arrest, if the offense is

a felony, a private person, if any public offense, a peace-officer, may break open the door or window in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired." 2. Amended by Code Amdts. 1873-74, p. 435.

**Same.**

§ 845. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

Legislation § 845. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 176); based on Crim. Prac. Act, Stats. 1851, p. 226, § 133, which read: "§ 133. An officer may break open any outer or inner door or window of a dwelling-house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation."

**Weapons may be taken from persons arrested.**

§ 846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

Legislation § 846. Enacted February 14, 1872.

**Duty of a private person who has made an arrest.**

§ 847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace-officer.

Legislation § 847. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 185); in substance the same as Crim. Prac. Act, Stats. 1851, p. 227, § 143.

**Duty of officer arresting with warrant.**

§ 848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Legislation § 848. Enacted February 14, 1872.  
Warrant of arrest, form of: Ante, § 814.

Person arrested without a warrant to be taken before a magistrate. Information to be filed.

§ 849. When an arrest is made without a warrant by a peace-officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

Legislation § 849. Enacted February 14, 1872.

Defendant to be taken before magistrate without delay: See ante, § 825.

Delay in taking before magistrate, a misdemeanor: See ante, § 145.

#### Arrest by telegraph.

§ 850. A justice of the supreme court, or a judge of a superior court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace-officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement.

Legislation § 850. 1. Enacted February 14, 1872 (based on Stats. 1862, p. 291, § 16), the first words of the section then reading, "A justice of the supreme court, district or county judge, or the judge of the municipal criminal court of San Francisco, may," thereafter the section reading as at present.  
2. Amended by Code Amdts. 1880, p. 33.

#### Same.

§ 851. Every officer causing telegraphic copies of warrants to be sent, must certify as correct, and file in the telegraph-office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

Legislation § 851. Enacted February 14, 1872; based on Stats. 1862, p. 291, § 16.

## CHAPTER VI.

## Retaking after an Escape or Rescue.

- § 854. May be at any time or in any place in the state.  
 § 855. May break open door or window if admittance refused.

May be at any time or in any place in the state.

§ 854. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the state.

Legislation § 854. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 180); in substance the same as Crim. Prac. Act, Stats. 1851, p. 227, § 144.  
 Assisting escapes: Ante, § 109.

May break open door or window if admittance refused.

§ 855. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

Legislation § 855. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 187); based on Crim. Prac. Act, Stats. 1851, p. 227, § 145, which read: "§ 145. To retake the person escaping or rescued the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling-house."

Breaking doors in making arrest: See ante, § 844.

## CHAPTER VII.

## Examination of the Case, and Discharge of the Defendant, or Holding Him to Answer.

- § 858. Magistrate to inform the defendant of the charge, and his right to counsel.  
 § 859. Time to send and sending for counsel.  
 § 860. Examination, when to proceed.  
 § 861. When to be completed. Postponement.  
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- § 872. Defendant, when and how committed.
- § 873. Order for commitment.
- § 874. Certificate of bail being taken. [Repealed.]
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- § 876. Commitment, how made and to whom delivered.
- § 877. Form of commitment.
- § 878. Undertaking of witnesses to appear, when and how taken.
- § 879. Security for the appearance of witnesses, when and how required.
- § 880. Infants and married women may be required to give security.
- § 881. Witnesses to be committed on refusal to give security for their appearance.
- § 882. Witness unable to give security may be conditionally examined.
- § 888. Magistrate to return depositions, etc., to the court.

**Magistrate to inform the defendant of the charge, and his right to counsel.**

§ 858. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

**Legislation § 858.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 188); based on Crim. Prac. Act, p. 227, § 146, which had the words "and before any further proceedings are had," at end of section.

**Citations.** Cal. 55/298; 56/232; 59/866; 66/595, 596, 664; 67/232; 105/643. Crim. Prac. Act: Cal. (§ 146) 44/557.

**Time to send and sending for counsel.**

§ 859. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace-officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

**Legislation § 859.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 189); in substance the same as Crim. Prac. Act, Stats. 1851, p. 228, § 147.

**Citations.** Cal. 55/298; 66/595, 596, 664; 67/232; 105/643.

**Defendant's right to counsel.** The right to have the assistance of counsel is a constitutional one: Const. 1879, art. 1, § 13; see ante, § 825.

**Examination, when to proceed.**

§ 860. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after wait-

ing a reasonable time therefor, none appears, proceed to examine the case.

**Legislation § 860.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 190); based on Crim. Prac. Act, Stats. 1851, p. 228, § 148, which read: "§ 148. The magistrate shall immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case."

**Citations.** Cal. 56/232; 66/595, 596, 664; 67/232; 105/643.

#### **When to be completed. Postponement.**

§ 861. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

**Legislation § 861.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 191); based on Crim. Prac. Act, Stats. 1851, p. 228, § 149, which read: "§ 149. The examination must be completed at one session unless the magistrate for good cause shown adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant."

**Citations.** Cal. 51/287; 56/238; 66/596; 75/302; 119/325, 326; 139/212.

#### **On postponement, defendant to be committed or discharged on bail.**

§ 862. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed.

**Legislation § 862.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 192); based on Crim. Prac. Act, Stats. 1851, p. 228, § 150, which read: "§ 150. If an adjournment be had for any cause the magistrate shall commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this act, as security for his appearance at the time to which the examination is adjourned."

**Citations.** Cal. 66/596.

#### **Form of commitment.**

§ 863. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the fol-

lowing effect: "The within-named A. B. having been brought before me under this warrant, is committed for examination to the sheriff of ——" If the sheriff is not present, the defendant may be committed to the custody of a peace-officer.

**Legislation § 863.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 193); in substance the same as Crim. Prac. Act, Stats. 1851, p. 228, § 151.  
**Citations.** Cal. 59/866.

**Commitment, how made:** See post, §§ 872, 876.

#### **Depositions to be read on examination and subpoenas issued.**

§ 864. At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the state, required either by the prosecution or the defense.

**Legislation § 864.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 194); based on Crim. Prac. Act, Stats. 1851, p. 228, § 152, which read: "§ 152. At the examination the magistrate shall in the first place read to the defendant the depositions of the witnesses examined on the taking of the information. He shall also issue subpoenas for any witnesses required by the prosecutor or the defendant, as provided in section five hundred and forty-eight."

**Citations.** Cal. 56/238; 59/866.

#### **Examination of witnesses to be in presence of defendant, etc.**

§ 865. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

**Legislation § 865.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 195); in substance the same as Crim. Prac. Act, Stats. 1851, p. 228, § 153.

**Citations.** Cal. 56/238; 59/866.

#### **Examination of defendant's witnesses.**

§ 866. When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

**Legislation § 866.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 229, § 159, which read: "§ 159. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined."

**Defendant may produce witnesses:** See ante, § 686.

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**Exclusion and separation of witnesses.**

§ 867. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

**Legislation § 867.** Enacted February 14, 1872 (N. Y. Code Crim. Proc. § 202); based on Crim. Prac. Act, Stats. 1851, p. 229, § 160, the first part of which read, " § 160. The witnesses produced on the part either of the people or of the defendant, shall not be present at the examination of the defendant, and," thereafter the section reading as the present code section.

**Who may be present:** See post, § 868.

**Who may be present at the examination.**

§ 868. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

**Legislation § 868.** Enacted February 14, 1872 (N. Y. Code Crim. Proc. § 208); in substance the same as Crim. Prac. Act, Stats. 1851, p. 229, § 161. Citations. Cal. 115/61.

**Exclusion of witnesses:** See ante, § 867.

**Testimony, how taken and authenticated.**

§ 869. The testimony of each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate, or under his direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his counsel. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witness must be authenticated in the following form:

First. It must state the name of the witness, his place of residence, and his business or profession.

Second. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth, except in cases where the testimony



is taken down in shorthand, the answer or answers of the witness need not be read to him.

Third. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

Fourth. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing, as he gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

Fifth. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in shorthand, the transcript of the reporter appointed as aforesaid, when written out in longhand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, if the defendant be held to answer the charge, transcribe into longhand writing his said shorthand notes, and certify and file the same with the county clerk of the county, or city and county, in which the defendant was examined, and shall, in all cases, file his original notes with said clerk.

Sixth. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall not exceed that now allowed reporters in the superior courts of this state, and shall be paid out of the treasury of the county, or the city and county, in which the examination is had, on the certificate and order of the said magistrate.

Legislation § 869. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 204); based on Crim. Prac. Act, Stats. 1851, p. 229, § 162, which read: "§ 162. The testimony given by each witness must be reduced to writing as a deposition by the magistrate, or under his direction; and 1st. It must contain the name of the witness, his place of residence, and his business, or profession. 2d. If required by the defendant, or by the district attorney, or prosecutor, it must be taken by question and answer, and when so taken each answer must be distinctly read to the witness as it is taken down, and corrected or added to, until it is made conformable to what he declares to be the truth. 3d. If a question put be objected to on either side and overruled, or the witness decline answering it, that fact with the ground on which the question was overruled must be stated. 4th. It must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated as he gives it; and

and it must be signed and certified by the magistrate." When enacted in 1869 the testimony given by each witness must be reduced to writing, as a deposition, by the magistrate, or under his direction, and authenticated, in the following form: 1. It must state the name of the witness, his place of residence, and his business or profession. 2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth. 3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated. 4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it. 5. It must be signed and certified by the magistrate." 2. Amended by Code Amends. 1880, p. 80, changing the introductory paragraph to read, "The testimony given by each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate, or under his direction, and in other cases upon the demand of the prosecuting attorney, or of the defendant or his counsel, and authenticated in the following form"; the subdivisions reading the same as in original code. 3. Amended by Stats. 1881, p. 18, (1) the introductory paragraph and subds. First, Second, Third, and Fourth reading the same as the amendment of 1885 (the present section); (2) in subd. Fifth, having the proposition "to" before "charge" in second sentence; (3) instead of the present subd. Sixth, the act amending the section having, immediately following § 869 as amended, a section reading, "Sec. 2. The reporter's fees shall be paid out of the treasury of the county, or the city and county, on the certificate of the committing magistrate." 4. Amended by Stats. 1885, p. 182.

**Citations.** Cal. 50/95, 96; 54/576, 577; 56/281, 283; 57/652; 59/866; 64/86; 66/102, 864, 676; 67/232; 68/503; 69/602; 74/393; 75/101, 802, 803; 77/215; 83/362; 100/5; 105/656, 657; 127/161, 424, 426; 133/334; 142/221, 443, 444; 143/382, 577, 578; 145/741, 742, 743, 749; 151/204, 205; (subd. 2) 57/651; (subd. 3) 75/100; (subd. 4) 69/602; (subd. 5) 68/503; 77/215; 106/649; 127/244; 133/383; 143/381; (subd. 6) 83/364, 365, 366. App. 6/224; (subd. 5) 6/590, 591.

#### **Depositions to be kept. Transcript for defendant.**

§ 870. The magistrate or his clerk must keep the depositions taken on the information or the examination, until they are returned to the proper court; and must not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, district attorney, or other prosecuting attorney, and the defendant and his counsel; provided however, upon demand by defendant or his attorney the magistrate must order a transcript of the depositions taken on the information, or on the examination, to be im-

mediately furnished said defendant or his attorney, after the commitment of said defendant as provided by section eight hundred and seventy-six and eight hundred and seventy-seven of this code, and the reporter so furnishing said depositions, as aforesaid, shall receive compensation and be paid by the county for the same as provided by subdivision sixth of section eight hundred and sixty-nine of this code.

**Legislation § 870.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 205). 2. Amended by Stats. 1909, p. 1077, (1) omitting "on" before "the examination," and (2) adding the proviso.

**Citations.** Cal. 56/288; 188/388.

#### **Defendant, when and how discharged.**

§ 871. If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within-named A. B. guilty of the offense within mentioned, I order him to be discharged."

**Legislation § 871.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 207); based on Crim. Prac. Act, Stats. 1851, p. 230, § 163, the first part of which read, "§ 163. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an indorsement on the depositions and statement signed by him to the following effect," the indorsement reading as the code section.

**Citations.** Cal. 138/388. Crim. Prac. Act: Cal. (§ 163) 19/137.

#### **Defendant, when and how committed.**

§ 872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the complaint an order, signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within-named A. B. guilty thereof, I order that he be held to answer to the same."

**Legislation § 872.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 208); based on Crim. Prac. Act, Stats. 1851, p. 230, § 164, which read:

" § 164. If, however, it appear from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate shall in like manner indorse on the depositions and statement an order signed by him to the following effect: 'It appearing to me by the within depositions (and statement if any) that the offense therein mentioned (or any other offense according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within A. B. guilty thereof, I order that he be held to answer to the same.'" When enacted in 1872, § 872 read: "872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must indorse on the depositions an order, signed by him, to the following effect: 'It appearing to me that the offense in the within deposition mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within-named A. B. guilty thereof, I order that he be held to answer to the same.'" 2. Amended by Code Amdts. 1880, p. 87, and differed from the amendment of 1905 (the present section), having (1) "deposition" instead of "complaint" in the first instance and "depositions" in the second instance, and (2) at end of section, the words "and committed to the sheriff of the county of ——" 8. Amendment by Stats. 1901, p. 488; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 768.

Citations. Cal. 49/651; 56/288, 284; 57/561; 59/866; 61/879; 64/212, 261; 65/218; 66/664; 67/282, 288; 68/578, 579; 69/602; 73/255; 84/600, 601; 85/88, 864; 91/26; 93/879; 94/499; 96/817; 109/449; 113/284; 133/834; 142/598; 143/219, 553; 153/889, 890. App. 5/425, 553, 634; 8/742. Crim. Prac. Act: Cal. (§ 164) 19/187.

Time to file information: See ante, § 809.

Commitment, how made: See ante, § 868; post, § 876.

#### Order for commitment.

§ 873. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of ——".

Legislation § 873. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 209); based on Crim. Prac. Act, Stats. 1851, p. 280, § 165, which read: "§ 165. If the offense be not bailable, the following words, or words to the same effect, shall be added to the indorsement, 'and that he be committed to the sheriff of the county of ———.'" 4.

Citations. Cal. 49/651.

#### § 874. [Certificate of bail being taken. Repealed.]

Legislation § 874. 1. Enacted February 14, 1872. 2. Repealed by Stats. 1880, p. 87.

Citations. Cal. 49/651; 51/876.

**Order for bail on commitment.**

§ 875. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order, "and that he be admitted to bail in the sum of — dollars, and is committed to the sheriff of the county of — until he gives such bail."

**Legislation § 875.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 212); in substance the same as Crim. Prac. Act, Stats. 1851, p. 230, § 167. When enacted in 1872, § 875 read: "875. If the offense is bailable, and the defendant is admitted to bail, but bail has not been taken, the following words must be added to the order indorsed on the deposition: 'and that he is admitted to bail in the sum of — dollars, and is committed to the sheriff of the county of —, until he gives such bail.'" 2. Amended by Code Amdts. 1880, p. 87.

**Citations.** Cal. 49/651; 84/601, 602.

**Bail, generally:** See post, § 1268.

**Commitment, how made and to whom delivered.**

§ 876. If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace-officer, who must deliver the defendant into the proper custody, together with the commitment.

**Legislation § 876.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 213); based on Crim. Prac. Act, Stats. 1851, p. 230, § 168, which read: "§ 168. If the magistrate order the defendant to be committed as provided in section one hundred and sixty-five and one hundred and sixty-seven, he shall make out a commitment signed by him with his name of office and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace-officer who shall deliver the defendant into the proper custody, together with the commitment."

**Citations.** Cal. 49/651; 116/506, 507.

**Commitment, how made:** See ante, §§ 863, 872.

**Form of commitment.**

§ 877. The commitment must be to the following effect:

County of — (as the case may be).

The People of the State of California to the Sheriff of the County of —:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense,

and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this — day of —, eighteen [nineteen] —.

Legislation § 877. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 214); in substance the same as Crim. Prac. Act, Stats. 1851, p. 230, § 169.

Citations. Cal. 49/651; 68/578, 579; 85/364; 116/506, 507. Crim. Prac. Act: Cal. (§ 169) 42/199.

#### **Undertaking of witnesses to appear, when and how taken.**

§ 878. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

Legislation § 878. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 215); based on Crim. Prac. Act, Stats. 1851, p. 231, § 170, which had (1) the word "shall" instead of "may" after "magistrate," and (2) "recognizance" instead of "undertaking."

Citations. Cal. 61/58; 84/603, 604.

#### **Security for the appearance of witnesses, when and how required.**

§ 879. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

Legislation § 879. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 216); based on Stats. 1851, p. 231, § 171, which read: "§ 171. Whenever the magistrate shall be satisfied by proof on oath that there is reason to believe that any such witness will not fulfill his recognizances to appear and testify, unless security be required, he may order the witness to enter into a written recognizance with such sureties and in such sum as he may deem meet for his appearance as specified in the last section."

Citations. Cal. 84/604. App. 3/43.

Reducing testimony to writing: See ante, § 869.

Taking deposition of witness: See Const, 1879, art. 1, § 13; and post, § 882.

**Infants and married women may be required to give security.**

§ 880. Infants and married women, who are material witness[es] against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

**Legislation § 880.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 231, § 172, which had (1) "witnesses" instead of "witness," and (2) "may in like manner be required" instead of "may be required."

**Citations.** App. 8/483.

**Witnesses to be committed on refusal to give security for their appearance.**

§ 881. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

**Legislation § 881.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 218); based on Crim. Prac. Act, Stats. 1851, p. 231, § 178, which read: "§ 178. If a witness required to enter into recognizance to appear and testify either with or without sureties refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged."

**Citations.** Cal. 61/59.

**Witness unable to give security may be conditionally examined.**

§ 882. When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon discharged; and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same conditions as mentioned in section thirteen hundred and forty-five; but this section does not apply to an accomplice in the commission of the offense charged.

**Legislation § 882.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 219); based on Crim. Prac. Act, Stats. 1851, p. 231, §§ 174, 175, which

read: " § 174. When, however, it shall satisfactorily appear by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness shall thereupon be discharged. § 175. The last section shall not apply to the prosecutor or to an accomplice in the commission of the offense charged." When enacted in 1872, § 882 read: " 882. When, however, it satisfactorily appears, by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination must be by question and answer, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon be discharged; but this section does not apply to the prosecutor or to an accomplice in the commission of the offense charged." 2. Amended by Code Amdts. 1877-78, p. 122, (1) making a sentence of the first clause of the section; (2) in second sentence, (a) adding, after "question and answer," the words "in the presence of the defendant, or after notice to him, if on bail," and (b) omitting "to the prosecutor or" after "does not apply." 3. Amendment by Stats. 1901, p. 488; unconstitutional: See note, § 5, ante. 4. Amendment by Stats. 1905, p. 768.

Citations. Cal. 49/88; 64/86; 84/608, 604.

Constitutional provision. The constitution provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial": Const. 1879, art. 1, § 18.

#### Magistrate to return depositions, etc., to the court.

§ 883. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses taken by him.

Legislation § 883. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 221); based on Crim. Prac. Act, Stats. 1851, p. 231, § 176, which read: " § 176. When a magistrate has discharged a defendant, or has held him to answer as provided in sections one hundred and sixty-four and one hundred and sixty-five, he shall return without delay to the clerk of the court at which the defendant as [is] required to appear, the warrant if any, the depositions, the statement of the defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses taken by him."

Citations. Cal. 66/664; 67/232; 109/449; 118/285; 133/333.



## TITLE IV.

**Proceedings after Commitment and before Indictment.**

Chapter I. Preliminary Provisions. §§ 888-890.

II. Formation of the Grand Jury. §§ 894-910.

III. Powers and Duties of a Grand Jury. §§ 915-929.

IV. Presentment and Proceedings Thereon. §§ 931-937. [Repealed.]

## CHAPTER I.

**Preliminary Provisions.**

§ 888. What prosecutions must be by indictment or information.

§ 889. What by accusation or information.

§ 890. Indictments and accusations, in what court found.

**What prosecutions must be by indictment or information.**

§ 888. All public offenses triable in the superior courts must be prosecuted by indictment or information, except as provided in the next section.

**Legislation § 888.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 222); based on Crim. Prac. Act, § 177, as amended by Stats, 1863, p. 158, § 5, which read: "§ 177. All public offenses prosecuted in the district court and county court, must be prosecuted by indictment, except as provided in the next section." When enacted in 1872, § 888 read: "888. All public offenses triable in the district and county courts, must be prosecuted by indictment, except as provided in the next section." 2. Amended by Code Amdts. 1880, p. 12.

**Citations.** Cal. 57/561; 59/245; 85/88; 111/289, 240; 145/37.

**What by accusation or information.**

§ 889. When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in sections seven hundred and fifty-eight and seven hundred and seventy-two.

**Legislation § 889.** 1. Enacted February 14, 1872; based on Stats. 1851, p. 232, § 178, which read: "§ 178. When the proceedings are had for the removal of district, county, or township officers, they may be commenced by

as provided in section seventy and eighty-three." Enacted by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. Enacted by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. Enacted by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante.

and accusations, in what court found.

All accusations, informations, or indictments against district, county, municipal, and township officers, must be found or filed in the superior court.

Legislation § 890. 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 179, as amended by Stats. 1863, p. 158, § 6, which read: "§ 179. Accusations against district, county, and township officers, and all indictments must be found in the county court." When § 890 was enacted in 1872, "municipal" was omitted. 2. Amended by Code Amdts. 1880, p. 34. Amendment by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante.

## CHAPTER II.

### Formation of the Grand Jury.

- § 894. Who may challenge the panel or an individual juror.
- § 895. Cause of challenge to a panel.
- § 896. Challenging grand juror.
- § 897. How made, etc.
- § 898. Decision upon challenges.
- § 899. Effect of allowing a challenge to a panel.
- § 900. Effect of allowing challenge to an individual juror.
- § 901. Objections can only be taken by challenge.
- § 902. Appointment of a foreman.
- § 903. Oath to foreman.
- § 904. Oath of other grand jurors.
- § 905. Charge of the court.
- § 906. Retirement of the grand jury. Discharge of.
- § 907. Special grand jury. [Repealed.]
- § 908. Order for special grand jury. [Repealed.]
- § 909. Order, how executed. [Repealed.]
- § 910. Special grand jury, how formed. [Repealed.]

Who may challenge the panel or an individual juror.

§ 894. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

Legislation § 894. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 897); based on Crim. Prac. Act, § 181, as amended by Stats. 1854, Kerr ed.

p. 161, Redding ed. p. 80, § 2, which read: "§ 181. A challenge may be taken to the panel of the grand jury, or to any individual grand juror in the cases hereinafter prescribed, by the people or the defendant."

See, as to formation of grand jury, Code Civ. Proc., §§ 241 et seq.

#### **Cause of challenge to a panel.**

§ 895. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury-box of the county;
2. That notice of the drawing of the grand jury was not given;
3. That the drawing was not had in the presence of the officers designated by law.

Legislation § 895. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 288); based on Crim. Prac. Act, Stats. 1851, p. 282, § 182, which read: "§ 182. A challenge to the panel may be interposed for one or more of the following causes only: 1st. That the requisite number of ballots was not drawn from the jury-box of the county, as prescribed by law. 2d. The notice of the drawing of the grand jury was not given as prescribed by law. 3d. That the drawing was not had in the presence of the officers or officer designated by law."

Citations. Cal. 119/3.

#### **Challenging grand juror.**

§ 896. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

First. That he is a minor.

Second. That he is an alien.

Third. That he is insane.

Fourth. That he is a prosecutor upon a charge against the defendant.

Fifth. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

Sixth. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily

his declaration, under oath or otherwise, in sustaining such an opinion, act impartially and honestly to be submitted to him.

Enacted February 14, 1872 (N. Y. Code Crim. Proc., Crim. Prac. Act, § 188, as amended by Stats. 1869-70, p. 786, paragraph and subds. 1, 2, 3, 4, and 5 reading as amended in 1873-74 (the present section), except that subd. 4 shall read "a" before "prosecutor" (added in 1873-74) reading, "Sixth. That he has formed an opinion or belief that the defendant is guilty or innocent of the offense charged; but a hypothetical opinion, founded on a supposition supposed to be true, unaccompanied with malice or ill-will, shall not disqualify a juror or be a cause of challenge." When § 896 was amended in 1872, another subdivision, numbered 7, was added, which reads, "Seventh. That he has a state of mind exists on his part in reference to the case, which satisfies the court that he cannot act impartially and fairly in reference to the substantial rights of the party challenging." The amendments say: "Subd. 7 is added to § 188 of the Criminal Practice Act, as amended. (Stats. 1869-70, p. 786.) It stands upon the same footing of reason and justice as, and covers cases that may not fall within the scope of" 9. Amended by Code Amdts. 1873-74, p. 436. (Stats. 1873-74, p. 436; 189/429; 150/666; (subd. 2) 76/844; (subd. 6) 100/844; 185/151, 152; 139/428. App. 5/464, 466. Crim. Prac. Act, § 188) 28/469.

See also indictment or information: Post, § 995.  
 Grounds of challenge to juror: See post, §§ 1072, 1073, 1074.

**How made, etc.**

§ 897. The challenges mentioned in the last three sections may be made in writing, and must be tried by the court.

Enacted February 14, 1872 (N. Y. Code Crim. Proc., Crim. Prac. Act, Stats. 1851, p. 232, § 184, which read: "The challenges mentioned in the last three sections may be oral, and may be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury, which are triable by the court." When amended in 1872, § 897 read: "897. The challenges mentioned in the last three sections may be oral, and must be entered upon the minutes, or may be made in writing, and tried by the court in the same manner as challenges in the case of a trial jury, which are triable by the court." 2. Amended by Code Amdts. 1873-74, p. 436.  
 Trial of challenge: See post, § 1078.

**How made upon challenges.**

§ 898. The court must allow or disallow the challenge, and the court must enter its decisions upon the minutes.

**Legislation § 898.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 241); in substance the same as Crim. Prac. Act, Stats. 1851, p. 232, § 185. Similar provision as to trial juror: See post, § 1088.

#### **Effect of allowing a challenge to a panel.**

§ 899. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

**Legislation § 899.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 232, § 186. Crim. Prac. Act: Cal. (§ 186) 20/148.

#### **Effect of allowing challenge to an individual juror.**

§ 900. If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

**Legislation § 900.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 242, 243); based on Crim. Prac. Act, Stats. 1851, p. 232, §§ 187, 188, which read: "§ 187. If a challenge to an individual grand juror be allowed, he shall not be present or take part in the consideration of the charge against the defendant who interposed the challenge or the deliberations of the grand jury thereon. § 188. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt."

**Citations.** Cal. 54/89; 88/235. Crim. Prac. Act: Cal. (§ 188) 20/148. Grand juror acting after allowance of challenge: See ante, § 164.

#### **Objections can only be taken by challenge.**

§ 901. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge.

**Legislation § 901.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 233, § 189, the final words of which read, "in no other mode than that by challenge, as prescribed in the preceding section."

**Citations.** Cal. 150/666. Crim. Prac. Act: Cal. (§ 189) 28/469.

#### **Appointment of a foreman.**

§ 902. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also

appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

Legislation § 902. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 244); based on Crim. Prac. Act, Stats. 1851, p. 288, § 190, which had "shall" instead of "must" in both instances.

#### Oath to foreman.

§ 903. The following oath must be administered to the foreman of the grand jury:

"You, as foreman of the grand jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Legislation § 903. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 245); based on Crim. Prac. Act, Stats. 1851, p. 288, § 191, which read: "§ 191. The following oath shall be administered to the foreman of the grand jury: 'You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which you have or can obtain legal evidence. You shall present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.'" When § 903 was enacted in 1872, (1) "shall" was changed to "must" in the first two instances, and (2) the word "shall" was inserted before "have or can" in first sentence of oath. 2. Amended by Code Amdts. 1873-74, p. 487, (1) the auxiliary verb "will" changed from "shall" in all the instances, and (2) the present second sentence added.

Citations. Cal. 64/527.

**Oath of other grand jurors.**

§ 904. The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

Legislation § 904. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 246); based on Crim. Prac. Act, Stats. 1851, p. 238, § 192, which had "oath shall" instead of "oath must."

**Charge of the court.**

§ 905. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

Legislation § 905. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 248); based on Crim. Prac. Act, Stats. 1851, p. 238, § 192, which read: "§ 192. The grand jury being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting violations of any particular statute."

Charge to grand jury: See post, § 928.

**Retirement of the grand jury. Discharge of.**

§ 906. The grand jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but, whether the business is completed or not, they are discharged by the final adjournment of the court.

Legislation § 906. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 249, 251); based on Crim. Prac. Act, Stats. 1851, p. 238, §§ 194, 195, which read: "§ 194. The grand jury shall then withdraw to a private room, and inquire into the offenses cognizable by them. § 195. The grand jury on the completion of the business before them shall be discharged by the court, but whether the business be completed or not, they shall be discharged by the final adjournment of the court." 2. Amendment by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante.

Citations. Cal. 69/547; 152/74, 76, 78, 80.

Inquiry into offenses: See post, §§ 915, 928.

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As to discharge of jury "by the final adjournment of the court," see post, Legislation § 907, code commissioner's note.

**§ 907. [Special grand jury. Repealed.]**

Legislation § 907. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 238, § 196. 2. Repeal by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 693; the code commissioner saying in his note to §§ 907, 908, 909, 910, "These sections purported to authorize the court, if an offense is committed during a term of court, but after the grand jury has been discharged, to summon another grand jury. There are now no 'terms of court,' and any necessity which may arise after one grand jury has been discharged can be met by the drawing of another. These sections are, therefore, repealed."

Citations. Cal. 54/40.

**§ 908. [Order for special grand jury. Repealed.]**

Legislation § 908. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 238, § 197. 2. Amended by Stats. 1889, p. 214. 3. Repeal by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. 4. Repealed by Stats. 1905, p. 693. See ante, Legislation § 907, for code commissioner's note.

**§ 909. [Order, how executed. Repealed.]**

Legislation § 909. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 238, § 198. 2. Repeal by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 693. See ante, Legislation § 907, for code commissioner's note.

**§ 910. [Special grand jury, how formed. Repealed.]**

Legislation § 910. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 284, § 199. 2. Repeal by Stats. 1901, p. 483; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 693. See ante, Legislation § 907, for code commissioner's note.



## CHAPTER III.

## Powers and Duties of a Grand Jury.

- § 915. Powers of grand juries.
- § 916. Presentment defined. [Repealed.]
- § 917. Indictment defined.
- § 918. Foreman may administer oaths.
- § 919. Evidence receivable before grand juries.
- § 920. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence, etc.
- § 921. Degree of evidence to warrant indictment.
- § 922. Grand jurors must declare their knowledge as to commission of public offense.
- § 923. Must inquire into case of persons imprisoned, etc.
- § 924. Entitled to access to public prison, etc.
- § 925. Grand jury; may ask advice. Report of testimony. Copy to be filed. Who may be present at sessions.
- § 926. Secrets of grand jury to be kept, except, etc.
- § 927. Grand juror not to be questioned for his conduct, except, etc.
- § 928. Duty of grand jury relative to examination of books, etc.
- § 929. Institution of suits for recovery of moneys due the county.

## Powers of grand juries.

§ 915. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court by indictment.

**Legislation § 915.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 252); based on Crim. Prac. Act 1851, p. 234, § 205, which read: "§ 205. The grand jury has the power, and it is their duty to inquire into all public offenses committed or triable within the county, and to present them to the court either by presentment or by indictment." 2. Amendment by Stats. 1901, p. 484; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 694, omitting "either by presentment or," before "by indictment," at end of section; the code commissioner saying, "The change is made for the reason that grand juries no longer have authority to prefer presentments."

**Citations.** Cal. 60/105; 77/627.

**Inquiry into offenses:** See ante, § 906; post, § 928.

**Duties of grand jurors:** See post, § 928.

**Impanelling grand juries:** Const. 1879, art. 1, § 8; Code Civ. Proc., §§ 241-243; ante, §§ 894 et seq.

## § 916. [Presentment defined. Repealed.]

**Legislation § 916.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 234, § 207. 2. Repeal by Stats. 1901, p. 484; unconsti-

See note, § 8, ante. 3. Repealed by Stats. 1905, p. 693; the code commission saying: "This section relates to and defines presentments by grand juries and, as they no longer have authority to prefer a presentment, the section is superfluous and misleading, and is, therefore, repealed."  
 Statutes, Cal. 109/447.

#### **Indictment defined.**

§ 917. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

Legislation § 917. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 254), in exact language of Crim. Prac. Act, Stats. 1851, p. 234, § 206. Citations. Cal. 145/86. Crim. Prac. Act: Cal. (§ 206) 44/557.

Indictment must contain what: Post, § 950.

Indictment, sufficiency of: Post, § 959.

#### **Foreman may administer oaths.**

§ 918. The foreman may administer an oath to any witness appearing before the grand jury.

Legislation § 918. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 258); in exact language of Crim. Prac. Act, Stats. 1851, p. 234, § 208.

#### **Evidence receivable before grand juries.**

§ 919. In the investigation of a charge, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Legislation § 919. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 255, 256); based on Crim. Prac. Act, Stats. 1851, p. 234, §§ 209, 210, which read: "§ 209. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this act. § 210. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." 2. Amendment by Stats. 1901, p. 484; unconstitutional: See note, § 8, ante. 3. Amended by Stats. 1905, p. 694, in first sentence, omitting "for the purpose of either presentment or indictment" before

"the grand jury"; the code commissioner saying, "The change is made because grand juries have no longer authority to prefer presentments."

Citations. App. 8/220. Crim. Prac. Act: Cal. (§ 209) 4/219; (§ 210) 4/226; 19/542.

**Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence, etc.**

§ 920. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Legislation § 920. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 257); in exact language of Crim. Prac. Act, Stats. 1851, p. 235, § 211.

Citations. Cal. 64/437, 527; 76/345; 116/391. Crim. Prac. Act: Cal. (§ 211) 19/543.

Inquiry into offenses: See ante, § 906; post, § 923.

**Degree of evidence to warrant indictment.**

§ 921. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Legislation § 921. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 258); based on Crim. Prac. Act, Stats. 1851, p. 235, § 212, which read: "§ 212. The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury."

Citations. Cal. 137/224; 144/338. Crim. Prac. Act: Cal. (§ 212) 19/543.

**Grand jurors must declare their knowledge as to commission of public offense.**

§ 922. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow-jurors, who must thereupon investigate the same.

Legislation § 922. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 259); in substance the same as Crim. Prac. Act, Stats. 1851, p. 235, § 213.

Citations. Crim. Prac. Act: Cal. (§ 213) 21/373.

**Must inquire into case of persons imprisoned, etc.**

§ 923. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful or corrupt misconduct in office of public officers of every description within the county.

**Legislation § 923.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 260); in exact language of Crim. Prac. Act, Stats. 1851, p. 235, § 214. 2. Amendment by Stats. 1901, p. 484; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 694, substituting "willful or corrupt" for "willful and corrupt."

**Citations.** Cal. 49/651. App. 6/271.

**Entitled to access to public prison, etc.**

§ 924. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

**Legislation § 924.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 261); in exact language of Crim. Prac. Act, Stats. 1851, p. 285, § 215.

**Grand jury; may ask advice. Report of testimony. Copy to be filed. Who may be present at sessions.**

§ 925. The grand jury may, at all times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he may deem it necessary; the grand jury whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to be sworn and to report the testimony that may be given in such causes in shorthand, and reduce the same to longhand or typewriting; a copy of such testimony must be filed with the clerk of the court within ten days after the finding of such indictment and delivered to the defendant upon his arraignment after indictment, as provided by section nine hundred and eighty-eight of this code. The services of such stenographic reporter constitute a charge against the county. No person other than those specified in this and the suc-

ceeding section is permitted to be present during the session of the grand jury, except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions, or giving their votes upon any matter before them. The grand jury or district attorney may require by subpoena the attendance of any person before the grand jury as interpreter, and such interpreter may, while his services are necessary, be present at the examination of witnesses before the grand jury. The services of such interpreter constitute a charge against the county.

**Legislation § 925.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 262, 263, 264); based on Crim. Prac. Act, § 216, as amended by Stats. 1868, p. 158, § 7, which read: "§ 216. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, and of the district attorney. Unless his advice be asked, the judge of the court shall not be permitted to be present during the sessions of the grand jury. The district attorney of the county shall be allowed, at all times, to appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them, whenever they or said district attorney shall deem it necessary. Except the district attorney, no person shall be permitted to be present before the grand jury, besides the witnesses actually under examination, and no person shall be permitted to be present during the expressions of their opinions, or giving their votes upon any matter before them." When enacted in 1872, § 925 read: "925. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the grand jury except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions or giving their votes upon any matter before them." 2. Amended by Stats. 1897, p. 204, to read: "925. The grand jury may, at all times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he thinks it necessary. The grand jury, on the demand of the district attorney, whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to report the testimony that may be given in such causes in shorthand, and reduce the same afterward,

upon the request of the said district attorney, to longhand; a copy of the said testimony so taken must be delivered to the defendant in any such criminal cause upon the arraignment after indictment of the said defendant; the services of the said stenographic reporter is hereby constituted a charge against the county wherein the said grand jury may be impaneled. No other person other than above specified is permitted to be present during the session of the grand jury, except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions, or giving their votes upon any matter before them." 8. Amended by Stats. 1901, p. 484; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 694, (1) changing the second sentence to read, "The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he thinks it necessary; the grand jury, on the demand of the district attorney, whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to be sworn and to report the testimony that may be given in such causes in shorthand, and reduce the same, upon the request of the district attorney, to longhand or typewriting; a copy of such testimony must be delivered to the defendant upon his arraignment after indictment"; (2) adding a sentence at the end of the section, being that immediately preceding the last of the amendment of 1909; the code commissioner saying, "The statute of 1871-72, p. 540, authorizing the grand jury or district attorney to require the attendance of an interpreter, is codified in the last sentence." 5. Amended by Stats. 1909, p. 1126, the changes being in the second sentence, and the final sentence added.

Citations. Cal. 71/218; 116/390; 182/200, 201, 202; 141/399; 144/636, 637, 638.

Setting aside indictment because persons present during session of grand jury: See post, § 995.

### Secrets of grand jury to be kept, except, etc.

§ 926. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony or upon trial therefor.

Legislation § 926. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 265, 266); in substance the same as Crim. Prac. Act, Stats. 1851, p. 235, §§ 217, 218.

Citations. Cal. 64/527, 528; 77/688. App. 8/220. Crim. Prac. Act: Cal. (§ 218) 19/545.

**Grand juror not to be questioned for his conduct, except, etc.**

§ 927. A grand juror cannot be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow-jurors.

Legislation § 927. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 267); based on Crim. Prac. Act, Stats. 1851, p. 236, § 219, which read: "§ 219. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow-jurors."

Citations. Cal. 56/67. App. 7/225.

**Duty of grand jury relative to examination of books, etc.**

§ 928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report as to the facts they have found, with such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, not to exceed five dollars per day, payable as other county charges. The judge, on impanelment of such grand jury, shall charge them specially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged.

Legislation § 928. 1. Added by Code Amdts. 1880, p. 48, and then read: "928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report thereon, and if, in their judgment, the services of an expert are necessary, they shall have power to employ one at an agreed compensation not to exceed five dollars per day, payable as other county charges. The judge, upon the impanelment of such grand jury, shall charge them specially as to their duties under this section." 2. Amended by Stats. 1897, p. 204.

Citations. Cal. 141/899.

Duties of grand jury: See ante, § 915.

Charge to grand jury: See ante, § 905.

**Institution of suits for recovery of moneys due the county.**

§ 929. The grand jury, after having investigated the books and accounts of the various officials of the county, as in the foregoing section provided, may order the district attorney of the said county to institute suit to recover any moneys that, in the judgment of the said grand jury, may from any cause be due the county, and the order of the said grand jury, certified by the foreman of the said grand jury, filed with the county clerk of the said county, shall be full authority for the said district attorney to institute and maintain any such suit.

Legislation § 929. Added by Stats. 1897, p. 205.

Citations. Cal. 188/848; 141/898, 899.

**CHAPTER IV.**

**Presentment and Proceedings Thereon.**

- § 931. Presentment must be by twelve grand jurors, etc. [Repealed.]  
 § 932. Must be presented to the court and filed. [Repealed.]  
 § 933. Court must direct a bench-warrant if facts constitute a public offense. [Repealed.]  
 § 934. Bench-warrant, by whom and how issued. [Repealed.]  
 § 935. Form of bench-warrant. [Repealed.]  
 § 936. Bench-warrant, how served. [Repealed.]  
 § 937. Proceedings of magistrate on defendant being brought before him. [Repealed.]

Legislation Chapter IV. 1. Enacted February 14, 1872, and then consisted of §§ 931-937; based on Crim. Prac. Act, Stats. 1851, pp. 286, 287, §§ 220, 221, 224-228. The only section amended was § 935 (Code Amdts. 1880, p. 84). 2. Repeal by Stats. 1901, p. 485; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 698; the code commissioner saying in his note to §§ 931-937, "These sections compose Chapter IV of Title IV of Part II of the Penal Code. They relate solely to the proceedings after finding a presentment, and since the adoption of the constitution of 1879 have been inoperative, and are, therefore, repealed."

§ 931. [Presentment must be by twelve grand jurors, etc. Repealed.]



Legislation § 931. See ante, Legislation Chapter IV.

Citations. Cal. 54/103.

Indictment. Concurrence of twelve grand jurors: See post, § 940.

§ 932. [Must be presented to the court and filed. Repealed.]

Legislation § 932. See ante, Legislation Chapter IV.

§ 933. [Court must direct a bench-warrant if facts constitute a public offense. Repealed.]

Legislation § 933. See ante, Legislation Chapter IV.

§ 934. [Bench-warrant, by whom and how issued. Repealed.]

Legislation § 934. See ante, Legislation Chapter IV.

Citations. Crim. Prac. Act: Cal. (§ 225) 37/280.

§ 935. [Form of bench-warrant. Repealed.]

Legislation § 935. See ante, Legislation Chapter IV.

§ 936. [Bench-warrant, how served. Repealed.]

Legislation § 936. See ante, Legislation Chapter IV.

Citations. Cal. 54/103.

§ 937. [Proceedings of magistrate on defendant being brought before him. Repealed.]

Legislation § 937. See ante, Legislation Chapter IV.

## TITLE V.

## The Indictment.

Chapter I. Finding and Presentment of the Indictment. §§ 940-945.

II. Rules of Pleading and Form of the Indictment. §§ 948-972.

## CHAPTER I.

## Finding and Presentment of the Indictment.

§ 940. Indictment must be found by twelve jurors, indorsed, etc.

§ 941. If not found, depositions, etc., must be returned to court, etc.

§ 942. Effect of dismissal.

§ 943. Names of witnesses inserted at foot of indictment.

§ 944. Indictment, how presented and filed.

§ 945. Proceedings when defendant is not in custody.

**Indictment must be found by twelve jurors, indorsed, etc.**

§ 940. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Legislation § 940. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 268); in substance the same as Crim. Prac. Act, Stats. 1851, p. 237, § 229. Citations. Cal. 54/38. App. 5/465. Crim. Prac. Act: Cal. (§ 229) 21/372.

**If not found, depositions, etc., must be returned to court, etc.**

§ 941. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Legislation § 941. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 269); in substance the same as Crim. Prac. Act, Stats. 1851, p. 237, § 230. Citations. Cal. 54/38, 413. Crim. Prac. Act: Cal. (§ 230) 21/373.

**Effect of dismissal.**

§ 942. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct. But without such direction it cannot be resubmitted.

**Legislation § 942.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 270); based on Crim. Prac. Act, Stats. 1851, p. 237, § 231, which read: "§ 231. The dismissal of the charge shall not, however, prevent the charge from being again submitted to a grand jury, or as often as the court shall so direct. But without such direction it shall not be again submitted."

**Citations.** Cal. 54/413, 414; 65/218.

**Resubmission to grand jury where motion to set aside indictment or information sustained:** See post, § 997.

**Names of witnesses inserted at foot of indictment.**

§ 943. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

**Legislation § 943.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 271); based on Crim. Prac. Act, Stats. 1851, p. 237, § 232, which read: "§ 232. When an indictment is found the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment or indorsed thereon before it is presented to the court."

**Citations.** Cal. 54/108; 56/38; 71/213; 104/377; 189/75. Crim. Prac. Act: Cal. (§ 232) 26/114.

**Setting aside indictment because names of witnesses not indorsed:** See post, § 995.

**Indictment, how presented and filed.**

§ 944. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

**Legislation § 944.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 272); based on Crim. Prac. Act, Stats. 1851, p. 237, § 233, which read: "§ 233. An indictment when found by the grand jury shall be presented by their foreman in their presence to the court, and shall be filed by the clerk and remain in his office as a public record."

**Citations.** Cal. 54/38; 145/37.

**Proceedings when defendant is not in custody.**

§ 945. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sec-

tions nine hundred and seventy-nine to nine hundred and eighty-four, inclusive, against a defendant who fails to appear for arraignment.

Legislation § 948. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 237, § 234.

Citations. Cal. 55/298. Crim. Prac. Act: Cal. (§ 234) 35/109.

## CHAPTER II.

### Rules of Pleading and Form of the Indictment.

- § 948. Form of and rules of pleading.
- § 949. First pleading by the people is indictment or information.
- § 950. Indictment or information, what must contain.
- § 951. Form of indictment.
- § 952. Indictment must be direct and certain.
- § 953. When defendant is indicted by fictitious name, etc.
- § 954. May charge different offenses under separate counts relating to same act.  
Prosecution not required to elect between different counts.
- § 955. Statement as to time when offense was committed.
- § 956. Statement as to person injured or intended to be.
- § 957. Construction of words used in an indictment or information.
- § 958. Construction of words used in a statute.
- § 959. Indictment or information, when sufficient.
- § 960. Indictment, etc., when not insufficient.
- § 961. Presumptions of law, etc., need not be stated.
- § 962. Judgments, etc., how pleaded.
- § 963. Private statutes, how pleaded.
- § 964. Pleading in indictment for libel.
- § 965. Pleading in indictment or information for forgery, where instrument has been destroyed or withheld by defendant.
- § 966. Pleading in an indictment or information for perjury or subornation of perjury.
- § 967. Pleading in indictment or information for larceny or embezzlement.
- § 968. Pleading in an indictment or information for selling, etc., lewd and obscene books.
- § 969. Previous conviction of another offense.
- § 970. Indictment against several, one or more may be acquitted.
- § 971. Distinction between accessory before the fact and principal abrogated.
- § 972. Accessory may be indicted and tried though principal has not been.

### Form of and rules of pleading.

§ 948. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

**Legislation § 948.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 273); in substance the same as Crim. Prac. Act, Stats. 1851, p. 287, § 235. Citations. Cal. 59/377; 90/571. Crim. Prac. Act: Cal. (§ 285) 27/511; 82/38; 84/208.

**First pleading by the people is indictment or information.**

**§ 949.** The first pleading on the part of the people is the indictment or information.

**Legislation § 949.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 274); in exact language of Crim. Prac. Act, Stats. 1851, p. 287, § 236. 2. Amended by Code Amdts. 1880, p. 12, adding "or information" at end of section.

Citations. Cal. 57/561; 85/88.

Indictment, sufficiency of: See post, § 959.

Information, form of: See ante, § 809.

**Indictment or information, what must contain.**

**§ 950.** The indictment or information must contain:

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

**Legislation § 950.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 275); based on Crim. Prac. Act, Stats. 1851, p. 287, § 237, which read: "§ 237. The indictment shall contain the title of the action specifying the name of the court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended." 2. Amended by Code Amdts. 1880, p. 12, (1) in introductory paragraph, inserting "or information" after "indictment," and (2) in subd. 1, changing "indictment" to "same."

Citations. Cal. 49/890; 53/616; 58/107, 225, 227; 59/374, 398; 64/154, 261, 342; 66/229, 678, 675; 67/104; 70/99, 117, 524, 526; 73/359; 77/149; 78/87; 81/159; 82/608; 84/471; 85/645; 86/239; 91/466; 92/651; 94/597; 100/489; 102/241, 242; 103/676; 106/407; 110/371; 112/19; 127/100; 130/14, 15; 131/249; 137/264; 138/146; 141/582, 584; 143/67; 145/86, 104, 109; (subd. 2) 85/646; 86/239; 116/391; 118/76; 119/457; 139/120, 218; 145/107, 508. App. 4/226, 8/350, 352, 643, 647. Crim. Prac. Act: Cal. (§ 237) 6/209; 9/55; 20/119; 31/417; 39/332; 40/142.

Indictment, defined: Ante, § 917.

Sufficiency of allegation of offense: See post, §§ 951, 959.

**Form of indictment.**

§ 951. It may be substantially in the following form: The People of the State of California against A. B., in the Superior Court of the County of —, the — day of —, A. D. eighteen [nineteen] —. A. B. is accused by the grand jury of the county of —, by this indictment (or by the district attorney by this information), of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the — day of —, A. D. eighteen [nineteen] —, at the county of — (here set forth the act or omission charged as an offense), contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the state of California.

**Legislation § 951.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 276); based on Crim. Prac. Act, Stats. 1851, p. 288, § 288, which read: "§ 288. It may be substantially in the following form: 'The People of the State of California against A. B. in the Court of Sessions of the County of —, term A. D. 18—. A. B. is accused by the grand jury of the county of — by this indictment, of the crime of (giving its legal appellation, such as murder, arson, manslaughter, or the like, as designating it as felony or misdemeanor) committed as follows: The said A. B., on the — day of — A. D. 18— at the county of — (stating the act or omission constituting the offense, in the manner prescribed in this chapter, according to the forms mentioned in the next section where they are applicable).'" When enacted in 1872, § 951 read: "951. It may be substantially in the following form: The People of the State of California against A. B., in the County Court of the County of —, at its — Term, A. D. eighteen —: A. B. is accused by the grand jury of the county of —, by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the — day of —, A. D. eighteen —, at the county of — (here set forth the act or omission charged as an offense).'" 2. Amended by Code Amdts. 1880, p. 12.

**Citations.** Cal. 49/890; 58/107, 225, 227; 59/874; 64/154, 261, 342; 65/566; 66/229; 67/104; 70/99, 117, 524, 526; 77/149; 78/85; 81/159; 82/608; 84/471; 85/645; 91/466; 94/597; 100/439; 102/241; 105/509; 106/407; 112/19; 118/76; 119/457; 127/100; 180/14; 187/644; 188/146; 141/584; 143/67; 145/86, 104, 109. App. 4/226, 718; 7/617, 620; 8/350, 643. Crim. Prac. Act: Cal. (§ 288) 20/119; 81/417; 87/280; 89/881; 43/555.

**Sufficiency of indictment or information:** See post, § 959.

**Information, form of:** See ante, § 809.

**Indictment must be direct and certain.**

§ 952. It must be direct and certain, as it regards:

1. The party charged;
2. The offense charged;
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

**Legislation § 952.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 238, § 289, the introductory paragraph of which read, "The indictment must be direct and contain as it regards," the subdivisions reading same as the code section.

**Citations.** Cal. 49/390, 395; 53/616; 58/107, 225; 59/374; 64/154, 261, 342; 66/229; 70/99, 117, 524, 526; 78/85; 81/159; 82/608; 84/471; 85/645; 91/466; 94/597; 100/439; 102/241; 106/407; 110/371; 112/19; 118/76; 119/168, 457; 126/867; 127/100; 130/14, 15; 131/249; 133/146; 141/532, 534; 143/67; 145/36, 104, 109; (subd. 3) 81/160; 145/107. App. 4/226, 718; 8/350, 643; (subd. 2) 4/144. Crim. Prac. Act: Cal. (§ 289) 9/55; 12/326; 20/80; 34/209; 43/555.

**Sufficiency of allegation of offense:** See ante, §§ 950, 951; post, § 959.

**Certainty:** See post, § 959.

**When defendant is indicted by fictitious name, etc.**

§ 953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information.

**Legislation § 953.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 277); in substance the same as Crim. Prac. Act, Stats. 1851, p. 238, § 240. 2. Amended by Code Amdts. 1880, p. 18, (1) changing "indictment" to "charged" in both instances, and (2) adding "or information" at end of section.

**Citations.** Cal. 65/615; 78/85; 109/280.

**Charging defendant by fictitious or erroneous name, proceedings at arraignment:** See post, § 939.

**May charge different offenses under separate counts relating to same act. Prosecution not required to elect between different counts.**

§ 954. The indictment or information may charge different offenses, or different statements of the same offense, under separate counts, but they must all relate to the same act, transaction, or event, and charges of offenses occurring at different and distinct times and places must

not be joined. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant can be convicted of but one of the offenses charged, and the same must be stated in the verdict.

**Legislation § 954.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 278, 279); based on Crim. Prac. Act, Stats. 1851, p. 238, § 241, which read: "§ 241. The indictment shall charge but one offense, but it may set forth that offense in different forms under different counts." When enacted in 1872, § 954 read: "954. The indictment must charge but one offense, and in one form only, except that when the offense may be committed by the use of different means, the indictment may allege the means in the alternative." 2. Amended by Code Amdts. 1878-74, p. 437, to read: "954. The indictment must charge but one offense, but the same offense may be set forth in different forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count." 3. Amended by Code Amdts. 1880, p. 18, adding "or information" after "indictment." 4. Amendment by Stats. 1901, p. 485; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 772; the code commissioner saying, "The amendment is designed to authorize an offense to be set forth under different counts, and to excuse the prosecution from electing between them."

**Citations.** Cal. 48/190; 49/453; 58/103; 65/146; 66/675; 94/597; 106/640; 111/254; 118/179; 180/4; 146/803. Crim. Prac. Act: Cal. (§ 241) 27/401; 28/216.

#### **Statement as to time when offense was committed.**

§ 955. The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense.

**Legislation § 955.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 280); in substance the same as Crim. Prac. Act, Stats. 1851, p. 238, § 242. 2. Amended by Code Amdts. 1880, p. 18, (1) inserting "or information" after "indictment," and (2) "or filing" after "finding."

**Citations.** Cal. 68/437; 73/221; 104/612; 137/644, 645. App. 5/636.  
**Sufficiency of indictment or information:** See post, § 959.

#### **Statement as to person injured or intended to be.**

§ 956. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.



**Legislation § 956.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 281); based on Crim. Prac. Act, Stats. 1851, p. 288, § 243, which read: "§ 243. When an offense involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material."

**Citations.** Cal. 59/361; 67/56; 69/237; 70/502; 71/21; 72/403; 74/191; 79/180; 80/207; 89/496; 112/835; 120/662; 142/107, 108, 109, 110; 143/353. App. 5/123. Crim. Prac. Act: Cal. (§ 243) 17/336; 28/216; 29/262; 85/118; 87/280; 41/286.

#### **Construction of words used in an indictment or information.**

**§ 957.** The words used in an indictment or information are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

**Legislation § 957.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 282); based on Crim. Prac. Act, Stats. 1851, p. 288, § 244, which read: "§ 244. The words used in an indictment shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning." 2. Amended by Code Amdts. 1880, p. 18, inserting "or information" after "indictment."

**Citations.** Cal. 90/571; 120/663; 145/503. App. 1/614.

**Words and phrases defined by law:** See ante, § 7.

#### **Construction of words used in a statute.**

**§ 958.** Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used.

**Legislation § 958.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 283); in the exact language of Crim. Prac. Act, Stats. 1851, p. 288, § 245. 2. Amended by Code Amdts. 1880, p. 18, inserting "or information" after "indictment."

**Citations.** Cal. 58/227; 59/376; 63/28; 90/571; 98/631; 106/407; 134/308. Crim. Prac. Act: Cal. (§ 245) 35/114.

#### **Indictment or information, when sufficient.**

**§ 959.** The indictment or information is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held, or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or district attorney, as the case may be, unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Legislation § 959. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 284); based on Crim. Prac. Act, Stats. 1851, p. 238, § 246, which read: " § 246. The indictment shall be sufficient if it can be understood therefrom: 1st. That it is entitled in a court having authority to receive it, though the name of the court be not actually set forth. 2d. That it was found by a grand jury of the county in which the court was held. 3d. That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to discover his real name. 4th. That the offense was committed at some place within the jurisdiction of the court, except where, as provided by sections eighty-five to ninety-three, both inclusive, and as in the case of treason, the act, though done without the local jurisdiction of the county, is triable therein. 5th. That the offense was committed at some time prior to the time of finding the indictment. 6th. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. 7th. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case." When enacted in 1872, § 959 differed from the amendment of 1880 (the present section), (1) the introductory paragraph not having the words " or informa-

tion" after "indictment"; (2) subd. 2 reading, "2. If an indictment, that it was found by a grand jury of the county in which the court was held, or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held"; (8) in subd. 3, not having "or district attorney, as the case may be," after "to the jury"; (4) in subd. 5, not having "or filing of the information" at end of subdivision. 2. Amended by Code Amdts. 1880, p. 13.

**Citations.** Cal. 49/391; 57/565; 58/228; 59/376; 73/859; 75/630; 77/149, 447; 78/90; 80/288; 93/588; 96/175; 103/676; 106/407; 118/26; 136/392; 137/264; (subd. 8) 127/378; (subd. 5) 99/329; 137/644; (subd. 6) 80/280; 89/496; 90/572; 98/445; 125/370; 145/503. App. 1/614; 2/386. Crim. Prac. Act: Cal. (§ 246) 6/203, 488; 9/55; 21/403; 27/511; 31/418; 35/678; 37/280; 39/332.

**Form of indictment or information:** See ante, § 951.

**Sufficiency of allegation of offense:** See ante, §§ 950, 951.

**Certainty:** See ante, § 952.

**Indictment for particular crime:** See particular crime.

**Finding of indictment:** Ante, § 940.

**Statement of acts constituting the offense:** See ante, § 950.

**Number of counts in indictment:** See ante, § 954.

#### **Indictment, etc., when not insufficient.**

§ 960. No indictment or information is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits.

**Legislation § 960.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 285); based on Crim. Prac. Act, Stats. 1851, p. 239, § 247, which read: "§ 247. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant." 2. Amended by Code Amdts. 1880, p. 14, inserting "or information" after "indictment."

**Citations.** Cal. 56/444; 58/238; 59/377; 61/390; 64/54, 426; 65/446; 75/99; 77/149; 78/90; 80/288; 81/279; 88/139; 90/572; 93/588; 102/242; 103/677; 106/408; 120/668; 125/370; 127/378; 133/73; 137/264; 138/535; 139/116; 143/353; 145/504. App. 1/614; 2/386; 5/125. Crim. Prac. Act: Cal. (§ 247) 9/55; 28/210, 329; 31/418; 39/331.

**Errors not affecting substantial rights:** See post, §§ 1258, 1404.

#### **Presumptions of law, etc., need not be stated.**

§ 961. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information.

**Legislation § 961.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 286); in substance the same as Crim. Prac. Act, Stats. 1851, p. 289, § 248.  
2. Amended by Code Amdts. 1880, p. 14, inserting "or information" after "indictment," at end of section.

#### **Judgments, etc., how pleaded.**

§ 962. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

**Legislation § 962.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 287); in substance the same as Crim. Prac. Act, Stats. 1851, p. 289, § 249.  
**Citations.** Cal. 186/898.

#### **Private statutes, how pleaded.**

§ 963. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

**Legislation § 963.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 288); in substance the same as Crim. Prac. Act, Stats. 1851, p. 289, § 250.  
**Citations.** Cal. 115/447; 126/229. App. 1/41; 8/77.

#### **Pleading in indictment for libel.**

§ 964. An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

**Legislation § 964.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 289); in substance the same as Crim. Prac. Act, Stats. 1851, p. 289, § 251.  
2. Amended by Code Amdts. 1880, p. 14, inserting "or information" after "indictment" in both instances.  
**Citations.** Cal. 189/120.

#### **Pleading in indictment or information for forgery, where instrument has been destroyed or withheld by defendant.**

§ 965. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act

or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, or information, and established on the trial, the misdescription of the instrument is immaterial.

**Legislation § 965.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 290); in substance the same as Crim. Prac. Act, Stats. 1851, p. 239, § 252.  
2. Amended by Code Amdts. 1880, p. 14, inserting "or information" after "indictment" in both instances.

**Pleading in an indictment or information for perjury or subornation of perjury.**

**§ 966.** In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

**Legislation § 966.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 291); in substance the same as Crim. Prac. Act, Stats. 1851, p. 239, § 253.  
2. Amended by Code Amdts. 1880, p. 14, inserting "or information" after "indictment" in both instances.

**Citations.** Cal. 59/375; 64/341; 77/14; 113/75; 124/464; 131/249; 137/264. App. 6/501.

**Perjury and subornation of perjury:** See ante, §§ 118, 127.

**Pleading in indictment or information for larceny or embezzlement.**

**§ 967.** In an indictment or information for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

**Legislation § 967.** 1. Enacted February 14, 1872, and then read: "967. In an indictment for the larceny or embezzlement of money, bank notes, shares of stock, or valuable securities, it is sufficient to allege the larceny or

embellishment to be of money, bank notes, shares of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof." 2. Amended by Code Amdts. 1873-74, p. 429, differing from the amendment of 1880 (the present section), (1) not having the words "or information" after "in an indictment," and (2) having "cheat and defraud" instead of "cheat or defraud" in first instance. 3. Amended by Code Amdts. 1880, p. 16.

Statutes. Cal. 89/226; 100/439; 106/323; 108/541.

Pleading: See ante, §§ 954, 958.

**Pleading in an indictment or information for selling, etc., lewd and obscene books.**

§ 968. An indictment or information for exhibiting, publishing, printing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Legislation § 968. 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1880, p. 15, inserting "or information" after "indictment."

**Previous conviction of another offense.**

§ 969. In charging in an indictment or information the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny, it is sufficient to state, "That the defendant, before the commission of the offense charged in this indictment or information, was in (giving the title of the court in which the conviction was had) convicted of a felony (or attempt, etc., or of petit larceny)." If more than one previous conviction is charged, the date of the judgment upon each conviction must be stated, but not more than two previous convictions must be charged in any one indictment or information.

Legislation § 969. 1. Enacted February 14, 1872, the section then consisting of the first sentence of the present section, but not having the words "or information" after "indictment" in either instance. 2. Amended by Code Amdts. 1873-74, p. 438, adding a second sentence, reading, "If more than one previous conviction be charged in the indictment, the date of the judgment upon each conviction shall be stated, and not more than two previous convictions shall be charged in any one indictment." 3. Repealed by Code Amdts. 1880, p. 15. 4. Re-enactment by Stats. 1901, p. 465; uncon-

stitutional: See note, § 5, ante. 5. Re-enacted by Stats. 1905, p. 772; the code commissioner saying, "This is a re-enactment of the section as it existed prior to its repeal in 1880. It is believed that no good reason for such repeal existed."

Citations. Cal. 57/560, 561, 572; 64/154, 339, 340, 408; 65/298; 78/447, 451; 88/118; 138/535; 142/13.

#### **Indictment against several, one or more may be acquitted.**

§ 970. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

Legislation § 970. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 292); in exact language of Crim. Prac. Act, Stats. 1851, p. 240, § 254. 2. Amended by Code Amdts. 1880, p. 15, inserting "or information" after "Upon an indictment." a.

#### **Distinction between accessory before the fact and principal abrogated.**

§ 971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against his principal.

Legislation § 971. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 240, § 255, which read: "§ 255. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, in cases of felony, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals." When enacted in 1872, § 971 read: "971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals." 2. Amended by Code Amdts. 1873-74, p. 438, the final words of the section then reading, "shall hereafter be indicted, tried, and punished as principals, and no additional facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal." 3. Amended by Code Amdts. 1880, p. 15.

Citations. Cal. 66/398; 78/87, 89; 122/492; 123/412; 144/79, 80. Crim. Prac. Act: Cal. (§ 255) 6/24; 27/341; 40/141.

**Accessory may be indicted and tried though principal has not been.**

§ 972. An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted.

Legislation § 972. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 240, § 256, which read: " § 256. An accessory after the fact to a commission of a felony, may be indicted and punished, though the principal felon may be neither tried nor indicted." When enacted in 1872, § 972 read: " 972. An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried." 2. Amended by Code Amdts. 1873-74, p. 489, adding at end of section, "and though the principal may have been acquitted." 3. Amended by Code Amdts. 1880, p. 15, substituting "prosecuted" for "indicted" in both instances.



## TITLE VI.

Pleadings and Proceedings after Indictment and before the  
Commencement of the Trial.

- Chapter I. Arraignment of the Defendant. §§ 976-990.
- II. Setting Aside the Indictment. §§ 995-999.
- III. Demurrer. §§ 1002-1012.
- IV. Plea. §§ 1016-1025.
- V. Transmission of Certain Indictments from the County Court to the District Court or Municipal Criminal Court of San Francisco. §§ 1028-1030.
- VI. Removal of the Action before Trial. §§ 1033-1038.
- VII. The Mode of Trial. §§ 1041-1043.
- VIII. Formation of the Trial Jury and the Calendar of Issues for Trial. §§ 1046-1049.
- IX. Postponement of the Trial. § 1052.

## CHAPTER I.

## Arraignment of the Defendant.

- § 976. Defendant must be arraigned in the court where indictment or information was found.
- § 977. Defendant when to be present at arraignment.
- § 978. If in custody, to be brought before court.
- § 979. If discharged on bail, bench-warrant to issue.
- § 980. Bench-warrant, by whom and how issued.
- § 981. Form of bench-warrant.
- § 982. Directions in the bench-warrant if the offense is bailable.
- § 983. Bench-warrant, how served.
- § 984. Proceeding on giving bail in another county.
- § 985. Ordering defendant into custody or increasing bail when indictment is for felony.
- § 986. Defendant, if present when order made, to be committed; if not, bench-warrant to issue.
- § 987. Defendant, on arraignment, to be informed of his right to counsel. When court to assign counsel.
- § 988. Arraignment, how made.
- § 989. Proceedings on arraignment when defendant is not indicted by his true name.
- § 990. Time allowed and how defendant may answer on arraignment.

**Defendant must be arraigned in the court where indictment or information was found.**

§ 976. When the indictment or information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the cause is transferred to some other county for trial.

**Legislation § 976.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 296); based on Crim. Prac. Act, Stats. 1851, p. 240, § 258, which read: "§ 258. When the indictment is filed the defendant shall be arraigned thereon, before the court in which it is found, except in the cases mentioned in sections two hundred and seventy-nine and two hundred and eighty." When enacted in 1872, § 976 read: "976. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, if triable therein; if not, before the court to which it is transmitted." 2. Amended by Code Amdts. 1880, p. 15.

**Citations.** Cal. 60/105, 106; 73/564; 142/109. App. 4/513.

**Forfeiture of bail:** See post, §§ 1305 et seq.

**Defendant when to be present at arraignment.**

§ 977. If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

**Legislation § 977.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 297); in substance the same as Crim. Prac. Act, Stats. 1851, p. 240, § 259. 2. Amended by Code Amdts. 1880, p. 16, (1) changing "If the indictment is for a felony" to "If the indictment or information be for a felony."

**Citations.** Cal. 55/298; 57/350. App. 4/513. Crim. Prac. Act: Cal. (§ 259) 42/168.

**Rights of defendant:** See Const. 1879, art. 1, § 13.

**If in custody, to be brought before court.**

§ 978. When his personal appearance is necessary, if he is in custody, the court may direct and the officer in whose custody he is must bring him before it to be arraigned.

**Legislation § 978.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 298); based on Crim. Prac. Act, Stats. 1851, p. 240, § 260, which read: "§ 260. When his personal appearance is necessary, if he be in custody the court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer shall do so accordingly."

**Citations.** Cal. 57/350.

**If discharged on bail, bench-warrant to issue.**

§ 979. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when

his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

**Legislation § 979.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 299); in substance the same as Crim. Prac. Act, Stats. 1851, p. 240, § 261.  
**Citations.** Cal. 55/298; 56/84; 57/350. Crim. Prac. Act: Cal. (§ 261) 35/109.

#### **Bench-warrant, by whom and how issued.**

§ 980. The clerk, on the application of the district attorney, may, at any time after the order, whether the court is sitting or not, issue a bench-warrant to one or more counties.

**Legislation § 980.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 800); in substance the same as Crim. Prac. Act, Stats. 1851, p. 240, § 262.  
**Citations.** Cal. 55/298. App. 4/513. Crim. Prac. Act: Cal. (§ 262) 35/109.

**Issuance of bench-warrant:** See post, § 1196.

#### **Form of bench-warrant.**

§ 981. The bench-warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of —. The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State: An indictment having been found (or information filed) on the — day of —, A. D. eighteen [nineteen] —, in the superior court of the county of —, charging C. D. with the crime of — (designating it generally); you are, therefore, commanded forthwith to arrest the above-named C. D., and bring him before that court (or if the indictment and information has been sent to another court, then before that court, naming it), to answer said indictment (or information), or if the court be not in session, that you deliver him into the custody of the sheriff of the county of —.

Given under my hand, with the seal of said court affixed, this — day of —, A. D. —.

By order of said court.

[Seal]

E. F., Clerk.

**Legislation § 981.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 801); based on Crim. Prac. Act, Stats. 1851, p. 241, § 263, which read the same as § 981 when enacted in 1872, except that it (1) had the words "in the court of sessions, in the county," instead of "in the county court

of the county," but (2) did not contain the words "(or if the indictment has been sent to another court, then before that court, naming it)." When enacted in 1872, the first part of § 981 read: "981. The bench-warrant upon the indictment must, if the offense is a felony, be substantially in the following form: County of ——. The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State: An indictment having been found on the — day of —, A. D. eighteen —, in the county court of the county of —, charging O. D. with the crime of — (designating it generally); you are therefore commanded forthwith to arrest the above-named C. D., and bring him before that court (or if the indictment has been sent to another court, then before that court, naming it), to answer said indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of —," the remainder of the section reading as at present. 2. Amended by Code Amdts. 1880, p. 16.

Citations. Cal. 54/108; 55/298.

#### Directions in the bench-warrant if the offense is bailable.

§ 982. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench-warrant a direction to the following effect: "Or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment (or information)"; and the court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of — dollars."

Legislation § 982. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 302, 303); based on Crim. Prac. Act, Stats. 1851, p. 241, §§ 264, 265, 266, which read: "§ 264. The defendant, if the offense be punishable with death, when arrested under the warrant, shall be held in custody by the sheriff of the county in which the indictment is found, unless admitted to bail, upon an examination upon a writ of habeas corpus. § 265. If the offense be not capital, the bench-warrant shall be in a similar form, adding to the body thereof a direction to the following effect, 'Or if he require it, that you take him before any magistrate in that county, or in the county in which you arrested him, that he may give bail to answer to the indictment.' § 266. If the offense charged be not capital, the court upon directing the bench-warrant to issue shall fix the amount of bail, and an indorsement shall be made upon the bench-warrant signed by the clerk, to the following effect: 'The defendant is to be admitted to bail in the sum of — dollars.'"

2. Amended by Code Amdts. 1880, p. 16, adding (1) "or information filed" after "indictment is found," and (2) "(or information)" after "answer to the indictment."

Citations. Cal. 54/108; 55/298.

#### **Bench-warrant, how served.**

§ 983. The bench-warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

Legislation § 983. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 804); in exact language of Crim. Prac. Act, Stats. 1851, p. 241, § 267.

Citations. Cal. 55/298.

How served: Compare post, § 1198.

#### **Proceeding on giving bail in another county.**

§ 984. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

Legislation § 984. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 805); in substance the same as Crim. Prac. Act, Stats. 1851, p. 241, § 268.

Citations. Cal. 55/298.

Arrest: See ante, §§ 834-851.

Proceedings on giving bail out of county: See ante, § 823.

#### **Ordering defendant into custody or increasing bail when indictment is for felony.**

§ 985. When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

Legislation § 985. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 806); in substance the same as Crim. Prac. Act, Stats. 1851, p. 241, § 269.

When enacted in 1872, § 985 read: "985. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order." 2. Amended

by Code Amdts. 1873-74, p. 489, inserting "or in which it is pending" after "indictment is presented." S. Amended by Code Amdts. 1880, p. 16.

Citations. Crim. Prac. Act: Cal. (§ 269) 85/109.

Increase of bail: See post, § 1289.

**Defendant, if present when order made, to be committed; if not, bench-warrant to issue.**

§ 986. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench-warrant must be issued and proceeded upon in the manner provided in this chapter.

Legislation § 986. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 807); based on Crim. Prac. Act, Stats. 1851, p. 241, § 270, which read: "§ 270. If such order be made and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench-warrant shall be issued and proceeded upon in the manner provided for in this chapter."

Citations. App. 4/518.

Commitment on increase of bail: See post, § 1289.

**Defendant, on arraignment, to be informed of his right to counsel. When court to assign counsel.**

§ 987. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Legislation § 987. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 808); the first sentence in substance the same as Crim. Prac. Act, Stats. 1851, p. 242, § 271.

Citations. Cal. 55/298; 66/229; 102/281; 187/645. App. 4/518.

Right to have counsel: U. S. Const., art. vi. admts.; Const. 1879, art. I, § 13.

**Arraignment, how made.**

§ 988. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a true copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information, provided, that if an indictment has been found against the defendant, at the time of his arraign

ment, he shall be served with a true copy of the testimony given in his case before the grand jury.

**Legislation § 988.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 809); in substance the same as Crim. Prac. Act, Stats. 1851, p. 242, § 272. When enacted in 1872, § 988 read: "988. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment." 2. Amended by Code Amdts. 1880, p. 16, differing from the amendment of 1909 (the present section), (1) not having the word "true" before "copy thereof," and (2) not containing the proviso. 3. Amended by Stats. 1909, p. 1127.

**Citations.** Cal. 65/296, 297; 66/229; 71/387; 73/445, 446; 76/347; 88/117; 104/377; 187/645; 145/610, 611. Crim. Prac. Act: Cal. (§ 272) 28/330.

**Arraignment and examination:** See ante, §§ 858, 859, 976; post, § 990.

#### **Proceedings on arraignment when defendant is not indicted by his true name.**

§ 989. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein.

**Legislation § 989.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 810); in substance the same as Crim. Prac. Act, Stats. 1851, p. 242, §§ 273, 274, 275. When enacted in 1872, § 989 read: "989. When the defendant is arraigned, he must be informed that if the name by which he is indicted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted." 2. Amended by Code Amdts. 1880, p. 17.

**Citations.** Cal. 66/229; 109/280. Crim. Prac. Act: Cal. (§ 273) 6/212.

*Charging defendant by erroneous name, proceedings in case of:* See ante, § 988.

*Arraignment, proceedings on:* See ante, § 988.

#### **Time allowed and how defendant may answer on arraignment.**

§ 990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information.

**Legislation § 990.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 811, 812); based on Crim. Prac. Act, Stats. 1851, p. 242, §§ 276, 277, which read: "§ 276. If on the arraignment the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment. § 277. If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such future day as the court may have allowed him, he may answer to the arraignment; either move the court to set aside the indictment, or may demur or plead thereto." 2. Amended by Code Amdts. 1880, p. 17, inserting "or information" in both instances.

Citations. Cal. 90/200. App. 4/518. Crim. Prac. Act: Cal. (§ 277) 21/373; 26/114; 28/272; 34/308.

## **CHAPTER II.**

### **Setting Aside the Indictment.**

§ 995. Indictment or information, when set aside on motion.

§ 996. Defendant waives objections unless he makes the motion.

§ 997. Motion when heard. If denied or granted, what proceedings are to be had.

§ 998. Effect of order for submission.

§ 999. Order no bar to another prosecution.

#### **Indictment or information, when set aside on motion.**

§ 995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases. If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this code.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is



under consideration, except as provided in section nine hundred and twenty-five.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on [an] information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That it was not subscribed by the district attorney of the county.

**Legislation § 995.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 313); in substance the same as Crim. Prac. Act, Stats. 1851, p. 242, §§ 278, 279. 2. Amended by Code Amdts. 1880, p. 43, (1) in introductory paragraph, adding (a) "or information" after "The indictment," and (b) "If it be an indictment" at end of paragraph; (2) adding at end of section the introductory paragraph reading "If it be on information" and the two final subdivisions.

**Citations.** Cal. 49/650, 651; 54/38, 399; 56/38; 59/365; 64/261, 382, 528; 65/218, 614, 615; 68/503; 69/547, 602; 71/212, 218; 76/345; 82/621; 83/558; 88/85, 235; 90/200; 91/642; 115/60; 117/560; 122/39; 130/74; 139/429; 145/37; 150/666; (subd. 1) 76/344; 143/218; (subd. 2) 76/344; (subd. 3) 54/39; 132/200; (subd. 4) 119/2, 325; 135/151. App. 5/464, 466; 8/217, 220, 602. Crim. Prac. Act: Cal. (§ 278) 4/219, 225; 21/372; 26/114; 28/272; 46/147, 154; (§ 279) 84/308.

**Names of witnesses to be indorsed on indictment:** See ante, § 948.

**Who may be present at sessions of grand jury:** See ante, § 925.

**Defendant waives objections unless he makes the motion.**

§ 996. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

**Legislation § 996.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 314); in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 280. 2. Amended by Code Amdts. 1880, p. 17, inserting "or information" after "indictment."

**Citations.** Cal. 48/550; 82/621; 90/200. App. 8/374. Crim. Prac. Act: Cal. (§ 280) 21/372; 28/272; 84/308; 48/550.

**Waiver of objection by failure to move or demur:** See post, § 1185.

**Motion when heard.** If denied or granted, what proceedings are to be had.

§ 997. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion

... must immediately answer the indictment or ... moving or pleading thereto. If the motion ... must order that the defendant, if in custody, be ... or, if admitted to bail, that his bail be exoner- ... deposited money instead of bail, that the same be ... it directs that the case be resubmitted to the ... grand jury, or that an information be filed by the ... provided, that after such order of resubmission the ... be examined before a magistrate, and discharged or ... him, as in other cases, if before indictment or informa- ... have not been examined and committed by a magistrate.

§ 997. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 317); in substance the same as Crim. Prac. Act, Stats. 1851, §§ 281, 282, 288. 2. Amended by Code Amdts. 1880, p. 17, (1) in ... adding "or information" after "indictment"; (2) in ... after "another grand jury," adding the phrase "or that ... be filed by the district attorney," and the proviso ending the

Cal. 88/85; 101/515; 127/64; 180/74. App. 5/558, 556.

dismissal of charge where charge dismissed: See ante, § 942.

jeopardy: See ante, § 687.

#### Order of order for submission.

§ 998. If the court directs the case to be resubmitted, or an in- ... to be filed, the defendant, if already in custody, must so ... unless he is admitted to bail; or, if already admitted to bail, ... money has been deposited instead thereof, the bail or money is ... answerable for the appearance of the defendant to answer a new in- ... ment or information; and, unless a new indictment is found or in- ... mation filed before the next grand jury of the county is discharged, ... court must, on the discharge of such grand jury, make the order ... prescribed by the preceding section.

§ 998. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 318, 319); based on Crim. Prac. Act, Stats. 1851, p. 243, §§ 284, 285, which read: "§ 284. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment. § 285. Unless a new indictment be found before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed in section two

hundred and eighty-three." 2. Amended by Code Amdts. 1880, p. 17, adding (1) "or an information to be filed" after "resubmitted," (2) "or information" after "new indictment," and (3) "or information filed" after "indictment is found."

Citations. App. 5/553, 556.

#### Order no bar to another prosecution.

§ 999. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense.

Legislation § 999. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 320); in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 286. 2. Amended by Code Amdts. 1880, p. 18, inserting "or information" after "indictment."

Citations. Cal. 128/455; 127/64; 130/75. App. 5/426.

Jeopardy: See ante, § 687.

### CHAPTER III.

#### Demurrer.

- § 1002. Pleading on part of defendant.
- § 1003. Demurrer or plea, when put in.
- § 1004. Demurrer, grounds for.
- § 1005. Demurrer, how put in and its form.
- § 1006. When heard.
- § 1007. Judgment on demurrer.
- § 1008. Demurrer allowed, bar to another prosecution, when.
- § 1009. If resubmission not ordered, defendant discharged, etc.
- § 1010. Proceedings, if submission ordered.
- § 1011. Proceedings, if demurrer is disallowed.
- § 1012. When objections, forming ground of demurrer, must or may be taken.

#### Pleading on part of defendant.

§ 1002. The only pleading on the part of the defendant is either a demurrer or a plea.

Legislation § 1002. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 321); in exact language of Crim. Prac. Act, Stats. 1851, p. 243, § 287.

#### Demurrer or plea, when put in.

§ 1003. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

**Legislation § 1003.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 322), in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 288. Citations. App. 4/214.

**Time to plead:** Ante, § 990.

**Time to put in plea where demurrer overruled:** See post, § 1011.

**Demurrer, grounds for.**

§ 1004. The defendant may demur to the indictment or information, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirements of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two;

3. That more than one offense is charged, except as provided in section nine hundred and fifty-four;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

**Legislation § 1004.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 323); in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 289. When enacted in 1872, § 1004 read: "1004. The defendant may demur to the indictment when it appears upon the face thereof, either: 1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; 2. That it does not substantially conform to the requirements of sections 950, 951, and 952; 3. That more than one offense is charged in the indictment; 4. That the facts stated do not constitute a public offense; 5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution." 2. Amended by Code Amdts. 1880, p. 18, and then read the same as the present section, except for the changes made in 1905, q.v., infra. 3. Amendment by Stats. 1901, p. 485; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 772, (1) in subd. 2, changing "requirement" to "requirements"; (2) in subd. 3, adding "except as provided in section nine hundred and fifty-four"; (3) in subd. 5, omitting "any" before "matter"; the code commissioner saying of the addition of the exception to subd. 3, "The object of the amendment is to make this section conform to the change in § 954, supra."

**Citations.** Cal. 47/108, 113; 48/252, 559; 49/890; 56/535; 58/225; 64/158, 261; 68/504; 71/389, 392; 77/34; 82/620, 621; 85/89; 103/428, 677; 119/168; 120/661; 131/250; 138/535; (subd. 1) 133/624; (subd. 2) 107/480; (subd. 3) 106/640; (subd. 4) 133/624. App. (subd. 3) 4/71. Crim. Prac. Act: Cal. (§ 289) 17/361; 27/402; 29/262; 43/83.

**Subd. 2. Specific requirements, etc.:** See ante, §§ 950, 951, 952, 954, 959.  
**Waiver of objection by not demurring:** See post, § 1012.

#### **Demurrer, how put in and its form.**

§ 1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded.

**Legislation § 1005.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 324); in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 290. 2. Amended by Code Amdts. 1880, p. 18, in second sentence, (1) adding "or information" after "indictment," and (2) changing "shall" to "must."

**Citations.** Cal. 138/535.

#### **When heard.**

§ 1006. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

**Legislation § 1006.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 325); in substance the same as Crim. Prac. Act, Stats. 1851, p. 243, § 291.

#### **Judgment on demurrer.**

§ 1007. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

**Legislation § 1007.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 326); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 292.

**Citations.** Cal. 65/566, 645; 121/494.

#### **Demurrer allowed, bar to another prosecution, when.**

§ 1008. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to

the same or another grand jury, or directs a new information to be filed; provided, that after such order or resubmission, the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases.

**Legislation § 1008.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 327); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 298. When enacted in 1872, § 1008 read: "1008. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury." 2. Amended by Code Amdts. 1880, p. 18, and then read the same as the present section, except for the changes made in 1905, q.v., infra. 3. Amendment by Stats. 1901, p. 486; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 773, (1) changing "submitted to another grand jury" to "submitted to the same or another grand jury," and (2) in the proviso, changing "order of resubmission" to "order of resubmission" (undoubtedly a typographical error); the code commissioner saying, "The purpose of the amendment is to authorize, where a demurrer to an indictment is sustained, the resubmission of the charge to the grand jury which found the original indictment, if it has not been discharged. This amendment changes the rule announced in *Terrill v. Superior Court*, 60 Pac. Rep. 516."

**Citations.** Cal. 68/219; 77/84; 107/478; 116/518, 514; 117/560; 118/27; 132/89; 143/217; 154/245. Crim. Prac. Act: Cal. (§ 298) 28/374, 275, 276; 39/609.

**If resubmission not ordered, defendant discharged, etc.**

§ 1009. If the court does not permit the information to be amended, nor direct that an information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

**Legislation § 1009.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 328); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 294. When enacted in 1872, § 1009 read: "1009. If the court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him." 2. Amended by Code Amdts. 1880, p. 18.

**Citations.** Cal. 116/514. Crim. Prac. Act: Cal. (§ 294) 39/609.

**Proceedings, if submission ordered.**

§ 1010. If the court directs that the case be resubmitted, the same proceedings must be had thereon as are prescribed in sections nine hundred and ninety-seven and nine hundred and ninety-eight.

**Legislation** § 1010. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 329); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 295.  
**Citations.** Crim. Prac. Act: Cal. (§ 295) 89/609.

**Proceedings, if demurrer is disallowed.**

§ 1011. If the demurrer is disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead judgment may be pronounced against him.

**Legislation** § 1011. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 330); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 296.  
**Citations.** Cal. 68/181; 102/232. Crim. Prac. Act: Cal. (§ 296) 28/268, 269, 273, 274, 275, 276.

**No one to be convicted but upon verdict or judgment:** See ante, § 689.

**Refusal to put in plea, proceedings:** See post, § 1024.

**Time to put in plea, generally:** See ante, § 1003.

**When objections, forming ground of demurrer, must or may be taken.**

§ 1012. When the objections mentioned in section one thousand and four appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

**Legislation** § 1012. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 331); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, § 297. 2. Amended by Code Amdts. 1880, p. 19, (1) changing "upon" to "on" before "the face," and (2) inserting "or information" after "indictment" in both instances.

**Citations.** Cal. 47/108; 58/225; 64/158; 66/230; 68/504; 71/389; 90/199; 100/439; 103/428, 566, 677; 119/168; 127/549; 131/250; 133/624; 138/535; 145/508. App. 4/71; 7/128. Crim. Prac. Act: Cal. (§ 297) 7/186; 17/861; 27/402, 403; 28/469.

**Waiver of defects by failure to demur:** See post, § 1185.

## CHAPTER IV.

## Plea.

- § 1016. The different kinds of pleas.
- § 1017. Pleas, how put in, and form.
- § 1018. Plea of guilty, how put in, and when it may be withdrawn.
- § 1019. What plea of not guilty puts in issue.
- § 1020. What may be given in evidence under plea of not guilty.
- § 1021. What is not a former acquittal.
- § 1022. What is a former acquittal.
- § 1023. Conviction or acquittal on an indictment for a higher offense, effect of.
- § 1024. Defendant refusing to answer, plea of not guilty to be entered.
- § 1025. Previous conviction.

**The different kinds of pleas.**

§ 1016. There are four kinds of pleas to an indictment or information. A plea of:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.
4. Once in jeopardy.

**Legislation § 1016.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 382); in exact language of Crim. Prac. Act, Stats. 1851, p. 244, § 298. 2. Amended by Code Amdts. 1880, p. 44, (1) in introductory paragraph, (a) changing "three kinds" to "four kinds," and (b) adding "or information" after "indictment"; (2) adding subd. 4.

**Citations.** Cal. 48/329; 49/396; 60/86.

**Pleas, how put in, and form.**

§ 1017. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."
2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."
3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of — (naming it), rendered at — (naming the place), on the — day of —."



4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged, (specifying the time, place, and court)."

**Legislation § 1017.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 338, 334); in substance the same as Crim. Prac. Act, Stats. 1851, p. 244, §§ 299, 300. 2. Amended by Code Amdts. 1880, p. 44, (1) in subds. 1 and 2, omitting "in this indictment" from end of subdivisions; (2) in subd. 3, omitting "in this indictment" after "offense charged"; (3) adding subd. 4.

**Citations.** Cal. 47/124; 49/395; 52/480; 55/298; 64/403; 73/445; 77/38; 101/282; 146/315; (subd. 4) 143/129. App. 4/214, 727; 5/542; (subd. 3) 6/104. Crim. Prac. Act: Cal. (§ 299) 4/242; (§ 300) 32/438.

**Plea generally:** Ante, § 1016.

**Plea of guilty.** This plea can only be put in by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put in by counsel: Post, § 1018.

**Insanity:** Ante, § 26, subd. 3.

**Evidence under plea of not guilty:** Post, § 1020.

**Plea of guilty, how put in, and when it may be withdrawn.**

§ 1018. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

**Legislation § 1018.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 335); based on Crim. Prac. Act, Stats. 1851, p. 245, §§ 301, 302, which read: "§ 301. A plea of guilty can in no place be put in, except by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put by counsel. § 302. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted." 2. Amended by Code Amdts. 1880, p. 19, inserting "or information" after "indictment."

**Citations.** Cal. 82/618, 619; 114/16; 153/403. Crim. Prac. Act: Cal. (§ 301) 4/242.

**Plea by corporation:** See post, § 1896.

**What plea of not guilty puts in issue.**

§ 1019. The plea of not guilty puts in issue every material allegation of the indictment or information.

**Legislation § 1019.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 336); based on Crim. Prac. Act, Stats. 1851, p. 245, § 303, which

read: "§ 803. The plea of not guilty shall be deemed a denial of every material allegation in the indictment." 2. Amended by Code Amdts. 1880, p. 19, adding "or information" after "indictment."

Citations. Cal. 60/86; 88/117. Crim. Prac. Act: Cal. (§ 803) 48/152.

#### What may be given in evidence under plea of not guilty.

§ 1020. All matters of fact tending to establish a defense, other than one specified in the third and fourth subdivisions of section ten hundred and sixteen, may be given in evidence under the plea of not guilty.

Legislation § 1020. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 389); in substance the same as Crim. Prac. Act, Stats. 1851, p. 245, § 804. When enacted in 1872, § 1020 read: "1020. All matters of fact tending to establish a defense other than that specified in the third subdivision of section 1016 may be given in evidence under the plea of not guilty." 2. Amended by Code Amdts. 1880, p. 44, changing "third subdivision" to "third and fourth subdivisions." 3. Amendment by Stats. 1901, p. 486: unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 773, substituting "one" for "that" before "specified."

Citations. Cal. 48/329; 60/86; 114/59; 146/311, 314, 315.

#### What is not a former acquittal.

§ 1021. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form of substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

Legislation § 1021. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 340); based on Crim. Prac. Act, Stats. 1851, p. 245, § 805, which read: "§ 805. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offense." 2. Amended by Code Amdts. 1880, p. 19, inserting "or information" after "indictment" in both instances.

Citations. Cal. 70/65; 79/179, 181; 132/500; 133/129. Crim. Prac. Act: Cal. (§ 805) 41/286.

Detention of defendant acquitted on ground of variance: See post, § 1165.

#### What is a former acquittal.

§ 1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form

or substance in the indictment or information on which the trial was had.

**Legislation § 1022.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 841); based on Crim. Prac. Act. Stats. 1851, p. 245, § 306, which read: "§ 306. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which he was acquitted." 2. Amended by Code Amdts. 1880, p. 19, inserting "or information" after "indictment."

**Conviction or acquittal on an indictment for a higher offense, effect of.**

§ 1023. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information.

**Legislation § 1023.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 9); in substance the same as Crim. Prac. Act. Stats. 1851, p. 245, § 307. When enacted in 1872, § 1023 read: "1023. When the defendant is convicted or acquitted upon an indictment, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment." 2. Amended by Code Amdts. 1880, p. 45.

**Citations.** Cal. 99/231; 182/500; 188/129; 188/484. App. 1/328.

**Plea of former conviction or acquittal, proceeding:** See ante, §§ 1016, subd. 3, 1017.

**Defendant refusing to answer, plea of not guilty to be entered.**

§ 1024. If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered.

**Legislation § 1024.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 342); in substance the same as Crim. Prac. Act. Stats. 1851, p. 245, § 308. 2. Amended by Code Amdts. 1880, p. 19, inserting "or information" after "indictment."

**Citations.** Cal. 71/396. Crim. Prac. Act: Cal. (§ 308) 28/269.

**Previous conviction.**

§ 1025. When a defendant who is charged in the indictment or information with having suffered a previous conviction, pleads either

guilty or not guilty of the offense for which he is indicted or informed against, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer must be entered by the clerk in the minutes of the court, and must, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answers that he has not, his answer must be entered by the clerk in the minutes of the court, and the question whether or not he has suffered such previous conviction must be tried by the jury which tries the issue upon the plea of not guilty, or in case of a plea of guilty, by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, nor alluded to on the trial.

**Legislation § 1025.** 1. Added by Code Amdts. 1873-74, p. 439, and differed from the section as re-enacted in 1905, (1) in first sentence, not having (a) "or information" after "indictment," nor (b) "or informed against" after "indicted"; (2) having "shall" instead of "must" in all instances; (3) having "If he answer" instead of "If he answers." 2. Repealed by Code Amdts. 1880, p. 19. 3. Re-enactment by Stats. 1901, p. 486; unconstitutional: See note, § 5, ante. 4. Re-enacted by Stats. 1905, p. 778; the code commissioner saying, "This is a re-enactment of the section as it existed prior to its repeal in 1880. By such repeal no provision was left for any plea to a charge of former conviction, and it is believed this should be provided for in the code."

**Citations.** Cal. 57/561, 572; 64/339, 340, 341; 65/297, 298; 73/443, 444, 445, 446, 447, 450, 451; 88/118; 142/13. App. 4/215, 216; 7/603, 604.

**Prior conviction not to be read to jury:** See post, § 1093.

## CHAPTER V.

**Transmission of Certain Indictments from the County Court to the District Court or Municipal Criminal Court of San Francisco.**

- § 1028. Transmission of indictments from the county to district courts. [Repealed.]
- § 1029. Indictments against a judge of the superior court, certificate of facts to be transmitted to governor.
- § 1030. Indictments transmitted to the municipal criminal court of San Francisco. [Repealed.]

§ 1028. [Transmission of indictments from the county to district courts. Repealed.]

**Legislation § 1028.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 309, as amended by Stats. 1863, p. 160, § 11. 2. Amended by Code Amdts. 1873-74, p. 440. 3. Repealed by Code Amdts. 1880, p. 6.

**Citations.** Cal. 51/601. Crim. Prac. Act: Cal. (§ 309) 4/241.

**Indictments against a judge of the superior court, certificate of facts to be transmitted to governor.**

§ 1029. When an indictment is found or an information filed in a superior court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who shall thereupon designate and direct a judge of the superior court of another county to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

**Legislation § 1029.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 245, § 310, which read: "§ 310. All indictments found against a member of the court of sessions, or against any justice of the peace, shall also be transmitted to the district court sitting in the county for trial." When enacted in 1872, § 1029 read: "1029. All indictments found against a county judge must also be transmitted to the district court of the county for trial." 2. Amended by Code Amdts. 1873-74, p. 440, substituting "a district court" for "the district court." 3. Amended by Code Amdts. 1880, p. 6.

**Citations.** Cal. 81/569.

§ 1030. [Indictments transmitted to the municipal criminal court of San Francisco. Repealed.]

**Legislation § 1030.** 1. Enacted February 14, 1872; based on Stats. 1869-70, p. 529, § 12. 2. Repealed by Code Amdts. 1880, p. 6.

## CHAPTER VI.

## Removal of the Action before Trial.

- § 1033. When action may be removed.
- § 1034. Application for removal, how made.
- § 1035. Application, when granted.
- § 1036. Order of removal.
- § 1037. Proceedings on removal, if defendant is in custody.
- § 1038. Authority of court to which action is removed. When original papers must be transmitted.

**When action may be removed.**

§ 1033. A criminal action may be removed from the court in which it is pending on application of the defendant, on the ground that a fair and impartial trial cannot be had in the county.

Legislation § 1033. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 344); in exact language of Crim. Prac. Act, Stats. 1851, p. 245, § 312. When enacted in 1872, § 1033 read: "1033. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending." 2. Amended by Code Amdts. 1880, p. 19, (1) omitting "prosecuted by indictment" after "A criminal action," and (2) changing "indictment" to "action" before "is pending," at end of section. 3. Amended by Stats. 1887, p. 61, to read: "1033. A criminal action may be removed from the court in which it is pending: First—On the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the action is pending. Second—On the application of the district attorney, on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending." 4. Amendment by Stats. 1901, p. 486; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 695; the code commissioner saying of the omissions, "The provisions relative to a change of the place of trial in a criminal action on application of the district attorney having been held unconstitutional in *People v. Powell*, 87 Cal. 348."

Citations. Cal. 56/328, 329, 330; 65/147; 80/298; 87/350, 354, 361, 366; 132/632. App. 6/770.

Change of venue in criminal cases. § 397 of the Code of Civil Procedure, providing for the change of the place of trial in civil actions, has no application to criminal cases. The only provisions of law providing for a removal of such cases from one county to another for trial are found in the Penal Code, §§ 1033-1038.

Change of venue in justices' or police courts: See post, §§ 1431, 1432.

**Application for removal, how made.**

§ 1034. The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which application must be served upon the district attorney at least one day prior to the hearing of the application. At the hearing the district attorney may serve and file such counter-affidavits as he may deem advisable. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney, and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not at the time of such application been arrested or given bail, or been arraigned, or pleaded or demurred to the indictment or information.

**Legislation § 1034.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 846); based on Crim. Prac. Act, § 818, as amended by Stats. 1857, p. 71, § 1, which read: "§ 818. The application must be made in open court and in writing, verified by the affidavit of the defendant, and a copy of said affidavit must be served on the district attorney, at least one day before the application is made to the court. And whenever said affidavit shall show that the defendant cannot safely appear in person to make his application, because the popular excitement against him is so great as to endanger his personal safety, and when said allegation in said affidavit is sustained by other and further testimony, in the judgment of the court, said application may be made by counsel, and shall be heard and determined in the absence of the defendant, though he be indicted for felony, and may not, at the time of such application, have been arrested, or have given bail, or been arraigned, or plead, or demurred to the indictment. But nothing in this act shall be held or construed to lessen the duty and obligation of all courts, officers and other persons, to pursue and arrest any person indicted for crime." When enacted in 1872, § 1034 read: "1034. The application must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which must be served on the district attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment." 2. Amended by Stats.

1837, p. 61, and then had only two sentences, the first of which read, "1834. The application must be made in open court and in writing, verified by the affidavit of the defendant or of the district attorney, as the case may be, a copy of which application must be served upon the attorney of the adverse party at least one day prior to the hearing of the application," the second sentence reading some as the final paragraph of the present section, except that it had the word "shall" instead of "must" before "be heard and determined." 3. Amended by Stats. 1901, p. 487; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 695; the code commissioner saying, "The design of the amendment is to conform this section to the amendment of the last section."

Citations. Cal. 56/329, 330; 65/147.

### Application, when granted.

§ 1035. If the court be satisfied that the representations of the applicant are true, an order must be made transferring the action to the proper court of some convenient county free from a like objection.

Legislation § 1035. 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 814, as amended by Stats. 1868, p. 160, § 14, which read: "§ 814. If the court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the county court of a county which is free from a like objection; or if the indictment has been transmitted to the district court of the county from the county court, then the order of removal shall be made to the district court of a county which is free from a like objection." When enacted in 1872, § 1035 read: "1035. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a county free from a like objection." 2. Amended by Stats. 1887, p. 62.

Citations. Cal. 65/147; 80/298.

### Order of removal.

§ 1036. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

Legislation § 1036. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 246, § 315, which read: "§ 315. The order of removal shall be entered on the minutes, and the clerk shall immediately make out and transmit a certified copy of the entry with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of



the defendant, and of the witnesses, to the court to which the action is removed."

Citations. Cal. 71/605; 142/857.

**Proceedings on removal, if defendant is in custody.**

§ 1037. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed.

Legislation § 1037. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 852); based on Crim. Prac. Act, Stats. 1851, p. 246, § 816, which read: "§ 816. If the defendant be in custody the order shall direct his removal by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly."

**Authority of court to which action is removed. When original papers must be transmitted.**

§ 1038. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Legislation § 1038. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 858); in substance the same as Crim. Prac. Act, Stats. 1851, p. 246, § 816. Citations. Cal. 142/857.

Costs on removal of criminal action chargeable against what county: See Pol. Code, § 4845.

Proceedings on removal in justices' or police courts: See post, § 1482.

## CHAPTER VII.

## The Mode of Trial.

- § 1041. Issue of fact defined.
- § 1042. Issue of fact, how tried.
- § 1043. When presence of defendant is necessary on the trial.

**Issue of fact defined.**

§ 1041. An issue of fact arises:

1. Upon a plea of not guilty.
2. Upon a plea of a former conviction or acquittal of the same offense.
3. Upon a plea of once in jeopardy.

Legislation § 1041. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 854); in exact language of Crim. Prac. Act, Stats. 1851, p. 246, § 318. When enacted in 1872, § 1041 read: "1041. An issue of fact arises: 1. Upon a plea of not guilty; or, 2. Upon a plea of a former conviction or acquittal of the same offense." 2. Amended by Code Amdts. 1880, p. 45.

**Issue of fact, how tried.**

§ 1042. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court.

Legislation § 1042. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 855); based on Crim. Prac. Act, Stats. 1851, p. 246, § 319, which read: "§ 319. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court into some other county." When enacted in 1872, § 1042 read: "1042. Issues of fact must be tried by jury." 2. Amended by Code Amdts. 1880, p. 5.

Citations. Cal. 92/575, 576.

Number of jurors. In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court: Const. 1879, art. i, § 7.

Issue of fact, defined: Code Civ. Proc., § 590.

Waiver of jury in justice's or police court: See post, § 1485.

Presence of defendant in police or justice's court: See post, § 1484.

**When presence of defendant is necessary on the trial.**

§ 1043. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial

may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

**Legislation § 1043.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 856); based on Crim. Prac. Act, § 320, as amended by Stats. 1868, p. 160, § 15, which read: "§ 320. If the indictment be for felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; provided, if his presence be necessary, for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant to that effect, require the personal attendance of the defendant at the trial; the defendant shall also be personally present when judgment is pronounced, if the court may deem it necessary." 2. Amended by Code Amdts. 1880, p. 19, substituting "If the prosecution be" for "If the indictment is," at beginning of section.

**Citations.** Cal. 57/851; 59/858; 68/684; 118/448. Crim. Prac. Act: Cal. (§ 230) 17/400; 42/166.

## CHAPTER VIII.

### Formation of the Trial Jury and the Calendar of Issues for Trial.

§ 1046. Formation of trial jury.

§ 1047. Clerk to prepare a calendar.

§ 1048. Order of disposing of issues on the calendar.

§ 1049. Defendant entitled to two days to prepare for trial.

#### Formation of trial jury.

§ 1046. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

**Legislation § 1046.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 858); in substance the same as Crim. Prac. Act, Stats. 1851, p. 247, § 321.

**Citations.** Cal. 119/622; 144/756. Crim. Prac. Act: Cal. (§ 821) 87/678, 679, 688, 696; 144/756.

**Impanelling trial juries:** Code Civ. Proc., §§ 246, 247.

**Formation of jury:** Code Civ. Proc., §§ 600-604.

**Qualifications and exemptions of jurors:** Code Civ. Proc., §§ 198-203.

#### Clerk to prepare a calendar.

§ 1047. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title

of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

**Legislation § 1047.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 247, § 322, which read: "§ 322. The clerk shall keep a docket of all the criminal actions pending in the court, in which he shall enter each indictment according to the date of the filing, specifying opposite the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail." 2. Amended by Code Amdts. 1880, p. 20, (1) substituting "keep a calendar" for "prepare a calendar," and (2) inserting "or information" after "indictment."  
Citations. Cal. 105/512.

**Order of disposing of issues on the calendar.**

§ 1048. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.
2. Prosecutions for misdemeanor, when the defendant is in custody.
3. Prosecutions for felony, when the defendant is on bail.
4. Prosecutions for misdemeanor, when the defendant is on bail.

**Legislation § 1048.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 247, § 323. When enacted in 1872, (1) the introductory paragraph read: "The issues on the calendar must be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days notice to the opposite party, with service of a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order"; (2) the four subdivisions had the word "Indictments" instead of "Prosecutions" (the change being made in 1880). 2. Amended by Code Amdts. 1873-74, p. 440, (1) the introductory paragraph reading as at present, except that it had the word "indictment" instead of "action"; (2) the subdivisions having the word "Indictments" instead of "Prosecutions," as at present. 3. Amended by Code Amdts. 1880, p. 20.

**Defendant entitled to two days to prepare for trial.**

§ 1049. After his plea, the defendant is entitled to at least two days to prepare for trial.

**Legislation § 1049.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 247, § 324, which read: "§ 324. After his plea, the defendant shall have at least two days to prepare for his trial, if he require it."

## CHAPTER IX.

## Postponement of the Trial.

## § 1052. Postponement, when and how ordered.

**Postponement, when and how ordered.**

§ 1052. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day.

**Legislation § 1052.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 247, § 325, which read: "§ 325. When an indictment is called for trial the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term or the next term." When enacted in 1872, § 1052 read: "1052. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same or of the next term." 2. Amended by Code Amdts. 1878-74, p. 441, and differed from the amendment of 1880, having (1) "indictment" instead of "action," and having (2) "of the same or of the next term" at end of section. 3. Amended by Code Amdts. 1880, p. 20.

**Citations.** Cal. 66/396; 76/842; 180/76; 185/134. App. 7/773.

## TITLE VII.

Proceedings after the Commencement of the Trial and  
before Judgment.

- Chapter I. Challenging the Jury. §§ 1055-1089.
- II. The Trial. §§ 1093-1131.
- III. Conduct of the Jury after the Cause is Submitted to Them.  
§§ 1135-1143.
- IV. The Verdict. §§ 1147-1167.
- V. Bills of Exception. §§ 1170-1177.
- VI. New Trials. §§ 1179-1182.
- VII. Arrest of Judgment. §§ 1185-1188.

## CHAPTER I.

## Challenging the Jury.

- § 1055. Definition and division of challenges.
- § 1056. Defendants cannot sever in challenges.
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- § 1058. Challenge to the jury defined.
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- § 1063. Denial of challenge, how made, and trial thereof. Who may be examined  
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- § 1066. Defendant to be informed of his right to challenge individual jurors.
- § 1067. Kinds of challenges to individual juror.
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- § 1071. Definition and kinds of challenge, for cause.
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- § 1076. Stating causes of challenge.
- § 1077. Exceptions to challenge, and denial thereof.
- § 1078. Trial of challenge.
- § 1079. Triers, how appointed. Majority may decide. [Repealed.]
- § 1080. Oath of triers. [Repealed.]
- § 1081. Juror challenged may be examined as a witness.
- § 1082. Rules of evidence on trial of challenge.
- § 1083. Decision.
- § 1084. Instructions to triers on trial of challenge for actual bias. [Repealed.]
- § 1085. Verdict of triers, and its effect. [Repealed.]
- § 1086. Challenges, first by the defendant and then by the people.
- § 1087. Order of challenges.
- § 1088. Peremptory challenges may be taken after challenges for cause on both sides are exhausted.
- § 1089. Alternate jurors, how chosen. Rights and duties of alternate jurors.

#### Definition and division of challenges.

§ 1055. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

Legislation § 1055. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 359); in exact language of Crim. Prac. Act, Stats. 1851, p. 247, § 326.

Challenges, kinds of: See post, §§ 1067, 1071.

Challenge, definition of: See post, § 1058.

#### Defendants cannot sever in challenges.

§ 1056. When several defendants are tried together they cannot sever their challenges, but must join therein.

Legislation § 1056. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 360); in substance the same as Crim. Prac. Act, Stats. 1851, p. 247, § 327.

Citations. Crim. Prac. Act: Cal. (§ 327) 8/303.

#### Panel defined.

§ 1057. The panel is a list of jurors returned by a sheriff, to serve at a particular court or for the trial of a particular action.

Legislation § 1057. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 247, § 328.

Citations. Cal. 139/64.

Selecting and returning jurors: Code Civ. Proc., §§ 204-211.

Drawing jurors: Code Civ. Proc., §§ 214-220.

Summoning jurors: Code Civ. Proc., §§ 225-228.

**Challenge to the jury defined.**

§ 1058. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

Legislation § 1058. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 861); in exact language of Crim. Prac. Act, Stats. 1851, p. 247, § 329.

**Upon what founded.**

§ 1059. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

Legislation § 1059. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 862); in substance the same as Crim. Prac. Act, Stats. 1851, p. 247, § 330.

Citations. Cal. 64/882; 73/860; 97/176; 184/529; 145/295. App. 1/578; 8/199. Crim. Prac. Act: Cal. (§ 830) 1/888.

**When and how taken.**

§ 1060. A challenge to the panel must be taken before a juror is sworn, and must be in writing or be noted by the phonographic reporter, and must plainly and distinctly state the facts constituting the ground of challenge.

Legislation § 1060. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 863); based on Crim. Prac. Act, Stats. 1851, p. 247, § 331, which read:

"§ 331. A challenge to a panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge."

Citations. Cal. 127/380; 184/528. App. 1/573; 8/197. Crim. Prac. Act: Cal. (§ 881) 1/888.

**If sufficiency of the challenge be denied, adverse party may except.****Exception, how taken and tried.**

§ 1061. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, or of the phonographic reporter, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Legislation § 1061. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 864); based on Crim. Prac. Act, Stats. 1851, p. 248, §§ 332, 333, which read: "§ 332. If the sufficiency of the facts alleged as a ground of challenge



be determined, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court. § 333. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true."

**Citations.** Cal. 61/549. Crim. Prac. Act: Cal. (§ 332) 1/333.

**Exception to challenge:** Compare with post, § 1077.

**Exception to ruling:** Post, § 1170.

**If exception overruled, court may allow denial, etc.**

§ 1062. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

**Legislation § 1062.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 365); in substance the same as Crim. Prac. Act, Stats. 1851, p. 248, § 334.

**Citations.** Cal. 61/549.

**Denial of challenge, how made, and trial thereof. Who may be examined on trial of challenge.**

§ 1063. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the phonographic reporter, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

**Legislation § 1063.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 366, 367); based on Crim. Prac. Act, Stats. 1851, p. 248, §§ 335, 336, which read: " § 335. If the challenge be denied, the denial may in like manner be oral, and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact. § 336. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge."

**Challenge when jury is summoned but not drawn, for bias in summoning officer.**

§ 1064. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be

good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

**Legislation § 1064.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 248, § 387, which read: "§ 387. When the panel is formed from persons whose names are not drawn from the grand-jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good ground of challenge to a juror. Such objection shall be made in the same form, and determined in the same manner as when made to a juror."

**Citations.** Cal. 49/177, 178; 76/846; 95/427; 101/283; 108/583; 116/195; 122/286; 127/880; 134/529, 534, 544. Crim. Prac. Act: Cal. (§ 387) 40/592.

**If challenge allowed jury to be discharged; if disallowed, to be impaneled.**

§ 1065. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

**Legislation § 1065.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 368); in substance the same as Crim. Prac. Act, Stats. 1851, p. 248, § 388. 2. Amended by Code Amdts. 1880, p. 20, changing "trial of the indictment in question" to "trial in question."

**Citations.** Cal. 73/860.

**Defendant to be informed of his right to challenge individual jurors.**

§ 1066. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so when the juror appears, and before he is sworn.

**Legislation § 1066.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 369); in substance the same as Crim. Prac. Act, Stats. 1851, p. 248, § 339.

**Citations.** Cal. 58/266; 76/846; 88/488, 489; 92/596; 102/231; 103/510.

**Kinds of challenges to individual juror.**

1067. A challenge to an individual juror is either:

1. Peremptory; or,
2. For cause.

**Legislation § 1067.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 370); in exact language of Crim. Prac. Act, Stats. 1851, p. 248, § 340.

Citations. Crim. Prac. Act: Cal. (§ 840) 87/678.

Challenges, kinds of: See ante, § 1055; post, § 1071.

#### Challenge, when taken.

§ 1068. It must be taken when the juror appears, and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn, and before the jury is completed.

Legislation § 1068. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 871); based on Crim. Prac. Act, Stats. 1851, p. 248, § 841, which read: "§ 841. It must be taken when the juror appears, and before he is sworn, but the court may for good cause permit it to be taken after the juror is sworn, and before the jury is completed."

Citations. Cal. 47/122; 53/577; 76/847; 87/120; 105/838; 116/197, 198; 123/488; 139/216. App. 1/171; 7/846, 847, 848; 8/199. Crim. Prac. Act: Cal. (§ 841) 4/200; 16/181; 24/18; 37/678, 679, 680, 690, 693.

#### Peremptory challenge, what, and how taken.

§ 1069. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Legislation § 1069. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 872); in substance the same as Crim. Prac. Act, Stats. 1851, p. 248, § 842.

#### Number of peremptory challenges.

§ 1070. If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to twenty and the state to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the state to five peremptory challenges.

Legislation § 1070. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 873); in substance the same as Crim. Prac. Act, § 843, as amended by Stats. 1863-64, p. 394, § 1. When enacted in 1872, § 1070 read: "1070. If the offense charged is punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to ten and the state to five peremptory challenges. On a trial for any other offense, the defendant is entitled to five and the state to three peremptory challenges." 2. Amended by Code Amdts. 1873-74, p. 441.

Citations. Cal. 59/441; 61/187, 486; 109/259; 132/94; 134/454. Crim. Prac. Act: Cal. (§ 843) 8/308.

#### Definition and kinds of challenge, for cause.

§ 1071. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

1. General—that the juror is disqualified from serving in any case; or,
2. Particular—that he is disqualified from serving in the action on trial.

**Legislation § 1071.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 374); in substance the same as Crim. Prac. Act, Stats. 1851, p. 249, § 344.  
**Citations.** Cal. 70/11. App. 1/573.  
**Challenge, definition of:** See ante, § 1055.  
**Challenges, kinds of:** See ante, §§ 1055, 1067.

#### **General causes of challenge.**

§ 1072. General causes of challenge are:

1. A conviction for felony;
2. A want of any of the qualifications prescribed by law to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

**Legislation § 1072.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 375); in substance the same as Crim. Prac. Act, Stats. 1851, p. 249, § 345.  
**Citations.** Cal. 61/558; 119/621; 128/487. App. 1/573; 7/350; 8/199.  
**Qualifications required of jurors:** Code Civ. Proc., § 198. See Const., art. xx, § 11.  
**Exemptions:** Code Civ. Proc., § 200.

#### **Particular causes of challenge.**

§ 1073. Particular causes of challenge are of two kinds:

**First.** For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

**Second.** For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias.

**Legislation § 1073.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 376); in substance the same as Crim. Prac. Act, § 346, as amended by Stats. 1867-68, p. 704, § 1. When § 1073 was enacted in 1872, the introductory paragraph and subd. 1 read same as at present; subd. 2 then reading, "2. For the existence of a state of mind on the part of the juror in reference

to the case, which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this code as actual bias; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill-will, does not disqualify a juror, and is not a cause of challenge for either actual or implied bias." 2. Amended by Code Amdts. 1873-74, p. 441.

Citations. Cal. 49/188, 177, 183; 62/379; 96/127; 100/229; (subd. 1) 61/553; (subd. 2) 116/195; 123/486. App. 7/850; (subd. 2) 7/105; 8/188. Crim. Prac. Act: Cal. (§ 346) 49/188.

Implied bias: Post, § 1074.

Actual bias: Post, § 1076.

#### Ground of challenge for implied bias.

§ 1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

**Legislation § 1074.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 877); in substance the same as Crim. Proc. Act, Stats. 1851, p. 249, § 847. When § 1074 was enacted in 1872, (1) the introductory paragraph and subds. 1, 2, and 3 read same as the amendment of 1880 (the present section); (2) subd. 4 did not have the words "or information" at end of subdivision (which were added in 1880); (3) subd. 5 had the words "in the indictment" at end of subdivision (omitted in 1880); (4) subd. 6 had the word "indictment" instead of "charge" (changed in 1880); (5) between the present subds. 7 and 8 the section contained another subdivision, numbered 8 (omitted in 1873-74), reading, "8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged"; (6) the present subd. 8 was then subd. 9. 2. Amended by Code Amdts. 1873-74, p. 442, (1) omitting subd. 8 of the original code section, and (2) subd. 9 renumbered subd. 8. 3. Amended by Code Amdts. 1880, p. 20.

**Citations.** Cal. 49/169, 178, 183; 59/355; 61/549, 553; 62/380; 76/346; 117/660; (subd. 4) 116/509; 119/621; (subd. 8) 65/148; 137/317. App. 7/850. Crim. Proc. Act: Cal. (§ 847) 16/130, 132; 27/259, 279; 41/39, 480.

#### **Exemption not a ground of challenge.**

§ 1075. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

**Legislation § 1075.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 879); in exact language of Crim. Proc. Act, Stats. 1851, p. 250, § 848.

**Citations.** Cal. 123/486.

**Exemption from jury duty:** See Code Civ. Proc., § 200.

#### **Stating causes of challenge.**

§ 1076. In a challenge for implied bias, one or more of the causes stated in section ten hundred and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section ten hundred and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter.

**Legislation § 1076.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 880), based on Crim. Proc. Act, Stats. 1851, p. 250, § 849, which

read: " § 349. In a challenge for implied bias, one or more of the causes stated in section three hundred and forty-seven must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court." Where enacted in 1872, § 1076 read: "1076. In a challenge for implied bias, one or more of the causes stated in section 1074 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 1078 must be alleged. In either case the challenge may be oral, but must be entered on the minutes of the court or of the phonographic reporter." 2. Amended by Code Amdts. 1878-74, p. 448.

Citations. Cal. 59/854; 61/549, 558; 100/229, 230, 231; 105/512; 108/583; 124/817; 125/46, 47; 139/429; 140/271; 142/445; 145/298; 147/550, 552; 152/585, 587, 545. App. 8/112. Crim. Prac. Act: Cal. (§ 849) 7/144; 16/130; 37/259.

#### **Exceptions to challenge, and denial thereof.**

§ 1077. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section ten hundred and sixty-one, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Legislation § 1077. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 381); in substance the same as Crim. Prac. Act, Stats. 1851, p. 250, § 350.

Citations. Cal. 61/549.

Exceptions, sufficiency of: Compare with §§ 1061, 1062, ante.

Exceptions to court's ruling: Post, § 1170.

#### **Trial of challenge.**

§ 1078. If the facts are denied, the challenge must be tried by the court.

Legislation § 1078. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 382); in substance the same as Crim. Prac. Act, Stats. 1851, p. 250, § 351. When enacted in 1872, § 1078 read: "1078. If the facts are denied, the challenge must be tried as follows: 1. If it be for implied bias, by the court. 2. If it be for actual bias, by triers." 2. Amended by Code Amdts. 1878-74, p. 448.

Citations. Cal. 49/183.

#### **§ 1079. [Triers, how appointed. Majority may decide. Repealed.]**

Legislation § 1079. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 250, § 352. 2. Repealed by Code Amdts. 1873-74, p. 448.

Citations. Cal. 68/180. Crim. Prac. Act; Cal. (§ 352) 43/187.

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**§ 1080. [Oath of triers. Repealed.]**

**Legislation § 1080.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 250, § 353. 2. Repealed by Code Amdts. 1873-74, p. 443.

**Juror challenged may be examined as a witness.**

**§ 1081.** Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

**Legislation § 1081.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 353); in substance the same as Crim. Prac. Act, Stats. 1851, p. 250, § 354.

**Rules of evidence on trial of challenge.**

**§ 1082.** Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

**Legislation § 1082.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 354); in substance the same as Crim. Prac. Act, Stats. 1851, p. 250, § 355.

**Decision.**

**§ 1083.** The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court.

**Legislation § 1083.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 250, § 356. When enacted in 1872, § 1083 read: "1083. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes." 2. Amended by Code Amdts. 1873-74, p. 443.

**§ 1084. [Instructions to triers on trial of challenge for actual bias. Repealed.]**

**Legislation § 1084.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 357, as amended by Stats. 1867-68, p. 704, § 2. 2. Repealed by Code Amdts. 1873-74, p. 444.

**§ 1085. [Verdict of triers, and its effect. Repealed.]**

**Legislation § 1085.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 251, § 358. 2. Repealed by Code Amdts. 1873-74, p. 444.



**Challenges, first by the defendant and then by the people.**

§ 1086. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

**Legislation § 1086.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 385); in substance the same as Crim. Prac. Act, Stats. 1851, p. 251, § 359.  
**Citations.** Crim. Prac. Act: Cal. (§ 359) 6/409.

**Order of challenges.**

§ 1087. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror, for an implied bias;
4. To an individual juror, for an actual bias.

**Legislation § 1087.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 386); in substance the same as Crim. Prac. Act, Stats. 1851, p. 251, § 360.  
**Citations.** Crim. Prac. Act: Cal. (§ 360) 16/138.

**Peremptory challenges may be taken after challenges for cause on both sides are exhausted.**

§ 1088. If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

**Legislation § 1088.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 251, § 361, which read: "§ 361. If all the challengers [challenges] on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted."  
**Citations.** Cal. 48/559; 65/148; 96/318.

**Alternate jurors, how chosen. Rights and duties of alternate jurors.**

§ 1089. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional

*jurors*, in its discretion, to be known as "alternate jurors." Such *jurors* must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; provided, that the *prosecution* shall be entitled to one, and the defendant to two, *peremptory* challenges to such alternate jurors. Such alternate jurors shall be seated near, with equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors; and except, as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury-box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors.

Legislation § 1089. Added by Stats. 1895, p. 279.

## CHAPTER II.

### The Trial.

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- § 1128. Jury may decide in court or retire in custody of officer. Oath of officers.
- § 1129. When defendant on bail appears for trial he may be committed.
- § 1130. If district attorney fails to attend, court may appoint.
- § 1131. When allegations of embezzlement sustained.

### Order of trial.

§ 1093. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument and having the right to close.

6. The judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter.

**Legislation § 1093.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 888); in substance the same as Crim. Prac. Act, § 862, as amended by Stats. 1855, p. 275, § 1, except that it did not contain the phrase relating to the court reporter. When § 1093 was enacted in 1872, (1) the introductory paragraph did not contain the words "unless otherwise directed by the court" (added in 1873-74); (2) subd. 1 read, "1. If the indictment is for felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with"; (3) subd. 2 had the word "indictment" instead of "charge" at end of subdivision (changed in 1880); (4) subd. 5 read, "5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney or other counsel for the people must open and the district attorney may conclude the argument"; (5) subd. 6 had "The judge must" instead of "The judge may" (changed in 1873-74). 2. Amended by Code Amdts. 1873-74, p. 444, and differed from the amendment of 1880 (the present section), (1) subd. 2 reading, "First—If the indictment be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where the indictment charges a previous conviction and the defendant has confessed the same, the clerk in reading such indictment shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with"; (2) subd. 2 had the word "indictment" instead of "charge" at end of subdivision. 3. Amended by Code Amdts. 1880, p. 21.

**Citations.** Cal. 45/652; 46/117, 803; 53/494; 55/298; 57/99, 317, 560; 58/269; 65/297, 298; 66/456, 457; 73/447, 448, 451, 452, 517, 549, 550;

76/282, 848; 85/570; 88/141; 103/571; 105/502; 110/48; 116/687; 131/653; 150/551; (subd. 1) 84/450; 88/117; 110/42; 116/686; 118/390; 143/601; 145/613; (subd. 2) 65/127; 149/836; (subd. 3) 76/349; (subd. 5) 76/349; (subd. 6) 53/575; 88/175, 177; 76/59; 118/329. App. 4/215; 6/839; 7/603, 604; (subd. 1) 8/114; (subd. 6) 8/223. Crim. Prac. Act: Cal. (§ 862) 26/79; 32/43; 43/153, 349; 53/573.

Number of counsel: Post, § 1095.

Prior conviction not to be read to jury: See ante, § 1025.

Oral charge to be taken down by reporter: See post, § 1127.

Instructions to be written: See post, § 1127.

#### **When order of trial may be departed from.**

§ 1094. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Legislation § 1094. Enacted February 14, 1872; in the exact language of Crim. Prac. Act, § 863, as amended by Stats. 1854, Kerr ed. p. 170, Redding ed. p. 81, § 4.

Citations. Cal. 85/570; 103/571; 150/551. App. 8/119. Crim. Prac. Act: Cal. (§ 863) 43/153.

#### **Number of counsel who may argue the case to the jury.**

§ 1095. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

Legislation § 1095. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 252, § 364, which read: "§ 364. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense the court may in its discretion restrict the argument to one counsel on each side." 2. Amended by Code Amdts. 1880, p. 21, (1) inserting "or information" after "indictment," and (2) changing "is" to "be" in both instances.

Citations. Cal. 43/288; 53/567; 55/298; 65/127; 76/348; 123/69. Crim. Prac. Act: Cal. (§ 364) 43/152, 153.

Order of argument is subject to discretion of court: See ante, § 1094.

#### **Defendant presumed innocent until the contrary is proved. Reasonable doubt.**

§ 1096. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

**Legislation § 1096.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 389); in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 365.  
**Citations.** Cal. 58/268, 269; 71/8; 84/33, 456; 122/141; 135/445; 149/262.

**Burden of proof, when shifts:** See post, § 1105.

**When reasonable doubt as to degree, he can be convicted only of lowest.**

§ 1097. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

**Legislation § 1097.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 390); in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 366.  
**Citations.** Cal. 58/268, 269; 68/180; 71/8; 118/270.

**Separate trials.**

§ 1098. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly, in the discretion of the court.

**Legislation § 1098.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 391); in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 367. 2. Amended by Code Amdts. 1880, p. 22, (1) in first sentence, substituting "charged with" for "indicted for," and (2) in second sentence, "charged" for "indicted."

**Citations.** Cal. 121/162. Crim. Prac. Act: Cal. (§ 367) 8/308.

**Discharging one of several defendants before verdict, that he may be a witness.**

§ 1099. When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged, that he may be a witness for the people.

**Legislation § 1099.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 368. 2. Amended by Code Amdts. 1880, p. 22, (1) substituting "charge" for "indictment," and (2) omitting "from the indictment" after "to be discharged."

**Citations.** Cal. 48/258; 70/55, 56; 110/611. Crim. Prac. Act: Cal. (§ 368) 24/46, 47, 48, 49; 44/539.

**Effect of discharge:** See post, § 1101.

**Same.**

§ 1100. When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant.

**Legislation § 1100.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 369. 2. Amended by Code Amdts. 1880, p. 22, (1) inserting "or information" after "indictment," and (2) omitting "from the indictment" after "to be discharged."

**Citations.** Cal. 70/55, 56.

**Effect of such discharge.**

§ 1101. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

**Legislation § 1101.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 370.

**Citations.** Cal. 48/258; 70/55. Crim. Prac. Act: Cal. (§ 370) 28/48.

**Jeopardy:** Ante, § 687.

**Rules of evidence in civil applicable to criminal cases, except, etc.**

§ 1102. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

**Legislation § 1102.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 392).

**Citations.** Cal. 57/568, 578; 58/214; 64/259; 98/181; 104/487; 120/666; 129/568; 182/201, 268; 142/294; 149/264. App. 2/282; 3/228.

**Evidence in civil cases:** Code Civ. Proc., Part IV.

**Reporter's notes as evidence:** See Code Civ. Proc., § 273.

**Act authorizing appointment of interpreter:** See post, Appendix, tit. "Interpreters."

**Evidence on trial for treason.**

§ 1103. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

**Legislation § 1103.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 896, 897); in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, §§ 871, 872. 2. Amended by Code Amdts. 1880, p. 22, inserting "or information" after "indictment."

**Citations.** Cal. 68/180.

**Treason:** U. S. Const., art. iii, § 3, subd. 1; Const. 1879, art. i, § 20; Code Civ. Proc., § 1968.

**Treason, proof of:** See Code Civ. Proc., §§ 1844, 1968.

### **Perjury, how proved.**

§ 1103a. Perjury must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

**Legislation § 1103a.** 1. Addition by Stats. 1901, p. 487; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 696; the code commissioner saying, "This section is composed of matter taken from § 1968 of the Code of Civil Procedure."

**Perjury, proof of:** See Code Civ. Proc., §§ 1844, 1968.

### **Evidence on trial for conspiracy.**

§ 1104. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

**Legislation § 1104.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 898); in substance the same as Crim. Prac. Act, Stats. 1851, p. 252, § 878. 2. Amended by Code Amdts. 1880, p. 22, (1) inserting "or information" after "indictment," and (2) omitting "in the indictment" after "not alleged."

**Citations.** Cal. 68/180.

### **When burden of proof shifts in trials for murder.**

§ 1105. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

**Legislation § 1105.** Enacted February 14, 1872; based on Crimes and Punishment Act, Stats. 1850, p. 282, § 87, which read: "§ 87. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on



the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide."

Citations. Cal. 49/7, 611; 58/251; 61/894, 895, 896, 528, 529; 65/108; 67/428; 69/604; 71/4, 7, 8, 9; 80/45, 168, 804; 83/382; 86/146, 149, 227; 88/239, 423, 424; 89/499, 500; 93/443; 94/47; 98/658; 104/378; 105/34; 115/246; 118/271; 122/178; 128/95; 131/655; 137/582; 148/421; 151/595. App. 1/571.

#### Evidence on a trial for bigamy.

§ 1106. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

Legislation § 1106. Enacted February 14, 1872; based on Crimes and Punishment Act, § 121, as amended by Stats. 1861, p. 415, § 1; so much of § 121 as related to the subject of the present section reading, "It shall not be necessary to prove either of the said marriages by the register, or certificate, thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when such second marriage shall have taken place without this state, cohabitation in this state, after such second marriage, shall be deemed the commission of the crime of bigamy."

Citations. Cal. 71/265; 99/289; 130/489.

Bigamy, defined: Ante, § 281.

#### Evidence upon a trial for forging bank bills, etc.

§ 1107. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Legislation § 1107. Enacted February 14, 1872; in substance the same as Crimes and Punishment Act, Stats. 1850, p. 238, § 79.

Forgery and counterfeiting: See ante, § 470.

**Abortion and seduction, evidence upon a trial for.**

§ 1108. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

**Legislation § 1108.** 1. Enacted February 14, 1872. 2. Amendment by Stats. 1901, p. 487; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 696, substituting "eighteen years" for "twenty-five years"; the code commissioner saying, "The purpose is to conform the section to the provisions of § 266."

**Citations.** Cal. 68/180; 118/674.

**Evidence on a trial for selling, etc., lottery tickets.**

§ 1109. Upon a trial for the violation of any of the provisions of chapter nine, title nine, part one of this code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

**Legislation § 1109.** Enacted February 14, 1872; in substance the same as Stats. 1861, p. 231, § 12.

"Provisions of chapter nine, title nine, part one, of this code"; Ante, §§ 319-326.

**False pretenses, evidence of.**

§ 1110. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any labor, money, or property, whether real or personal, or valuable thing, the defendant cannot be convicted if the false pre-

tense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof is in writing, subscribed by or in the handwriting of the defendant, or unless the pretense is proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section does not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

**Legislation § 1110.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, § 376, as amended by Stats. 1862, p. 53, § 1, except that it did not contain the excepting clause at the end of the code section. 2. Amendment by Stats. 1901, p. 487; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 696, changing (1) "any money, personal property," to "any labor, money, or property, whether real or personal," (2) "be" to "is" before "in writing" and before "proven," and (3) "shall" to "does" before "not apply"; the code commissioner saying of the first change, "thus conforming the section to the amendment to § 582."

**Citations.** Cal. 68/180; 70/118; 98/663; 102/564; 127/207; 135/272. App. 3/67.

**Conviction cannot be had on uncorroborated testimony of accomplice.**

§ 1111. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

**Legislation § 1111.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 899); based on Crim. Prac. Act, Stats. 1851, p. 252, § 375, which read: "§ 375. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense: and the corroboration shall not be sufficient if it merely show the commission of the offense or the circumstances thereof."

**Citations.** Cal. 49/630; 50/450, 481; 53/602, 607; 65/307; 68/180; 69/13; 71/19; 72/460, 461; 73/348, 849, 850, 851, 853; 84/481; 89/498; 96/181; 98/218, 280; 99/576; 111/14, 15; 114/578, 634; 121/557; 122/502; 123/408, 411; 134/310; 135/272; 138/841; 139/720, 727; 141/282; 143/265; 144/472. App. 2/202; 3/70; 4/699; 7/481, 482. Crim. Prac. Act: Cal. (§ 375) 39/404.

§ 1112. [If the evidence show higher offense than the one charged, proceedings to be had thereon. Repealed.]

Legislation § 1112. 1. Enacted February 14, 1872 (N. Y. Crim. Prac. Act, § 400); based on Crim. Prac. Act, Stats. 1851, p. 253, §§ 379, 380. 2. Repealed by Code Amdts. 1880, p. 6. Another section numbered 1112, entitled "Conviction of accessory after the fact," was added by Stats. 1901, p. 487; unconstitutional: See note, § 5, ante.

**Court may discharge jury when it has not jurisdiction, etc.**

§ 1113. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law.

Legislation § 1113. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 402); in substance the same as Crim. Prac. Act, Stats. 1851, p. 253, § 381. 2. Amended by Code Amdts. 1880, p. 22, omitting "in the indictment" after "facts charged."

Jurisdiction generally: See ante, §§ 777 et seq.

**Proceeding if jury discharged for want of jurisdiction of offense committed out of the state.**

§ 1114. If the jury be discharged because the court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged.

Legislation § 1114. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 403); in substance the same as Crim. Prac. Act, Stats. 1851, p. 253, § 382. 2. Amended by Code Amdts. 1880, p. 22, (1) changing "is" to "be" after "If the jury"; (2) omitting "in the indictment" after "offense charged"; (3) changing "appears" to "appear."

Citations. Crim. Prac. Act: Cal. (§ 882) 27/842.

Crime committed out of state: Ante, § 27, subd. 3.

Jurisdiction: See ante, §§ 778, 793, 794.

**Proceeding in such case, when offense committed in the state.**

§ 1115. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his

arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission is chargeable to that county.

**Legislation § 1115.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 404, 407); in substance the same as Crim. Prac. Act, Stats. 1851, p. 253, §§ 383, 384. 2. Amended by Code Amdts. 1880, p. 22, (1) changing "sufficient securities" to "sufficient sureties," and (2) adding "or information" after "indictment."

**Citations.** Crim. Prac. Act: Cal. (§ 383) 27/342.

**Same.**

§ 1116. If the defendant is not arrested on a warrant from the proper county, as provided in section eleven hundred and fifteen, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

**Legislation § 1116.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 406, 407); in substance the same as Crim. Prac. Act, Stats. 1851, p. 254, §§ 385, 386.

**Citations.** Crim. Prac. Act: Cal. (§ 386) 1/385.

**Proceedings if jury discharged because the facts do not constitute an offense.**

§ 1117. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed upon which the defendant can be legally convicted, in which case it may direct the district at-

torney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; provided, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases.

**Legislation § 1117.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 408, 409); in substance the same as Crim. Prac. Act, Stats. 1851, p. 254, §§ 387, 388. When enacted in 1872, § 1117 read: "1117. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury; and if the court directs that the case be submitted anew, the same proceedings must be had thereon as are prescribed in section 998." 2. Amended by Code Amdts. 1880, p. 28.

**Citations.** Cal. 64/268; 118/27.

**When evidence on either side is closed, court may advise jury to acquit.**

§ 1118. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice.

**Legislation § 1118.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 410); in substance the same as Crim. Prac. Act, Stats. 1851, p. 254, § 389

**Citations.** Cal. 70/18; 97/401; 105/266; 114/68; 118/28; 124/553; 132/501; 143/691, 693, 694, 695, 696, 698; 145/739.

**View of premises, when ordered and how conducted.**

§ 1119. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself,

on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

**Legislation § 1119.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 411); based on Crim. Prac. Act, Stats. 1851, p. 254, §§ 890, 891; § 890 being in substance the same as first clause of the code section, and § 891 reading, "§ 891. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time."

**Citations.** Cal. 53/61; 68/625, 626, 680, 683, 685; 71/606; 80/539; 122/183; 187/548. App. 5/837, 840.

**Knowledge of juror to be declared in court, and he to be sworn as a witness.**

§ 1120. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

**Legislation § 1120.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 418); in substance the same as Crim. Prac. Act, Stats. 1851, p. 254, § 892.

**Citations.** App. 5/840.

**Jurors may be permitted to separate during trial.**

§ 1121. The jurors sworn to try an action may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof.

**Legislation § 1121.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 414); in substance the same as Crim. Prac. Act, Stats. 1851, p. 255, § 893. 2. Amended by Code Amdts. 1880, p. 28, in first sentence, substituting "action" for "indictment."

**Citations.** Cal. 116/297; 117/657; 122/139; 149/264. App. 7/694, 695; 8/114, 115, 116. Crim. Prac. Act: Cal. (§ 893) 32/43.

**Oath and duty of officer having custody of juror:** See post, §§ 1128, 1440.

**Jury at each adjournment must be admonished, etc.**

§ 1122. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

**Legislation § 1122.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 415); in substance the same as Crim. Prac. Act, Stats. 1851, p. 255, § 394. Citations. Cal. 84/606; 116/297; 117/657; 149/265. App. 4/788.

**Proceedings when juror becomes unable to perform his duties.**

§ 1123. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled.

**Legislation § 1123.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 416); in substance the same as Crim. Prac. Act, Stats. 1851, p. 255, § 395. Citations. Cal. 64/61; 72/492; 96/128; 119/332; 185/463, 465.

**Discharge of jury:** See post, § 1139.

**Proceedings where juror becomes sick:** See post, § 1139.

**Court to decide questions of law arising during trial.**

§ 1124. The court must decide all questions of law which arise in the course of a trial.

**Legislation § 1124.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 417); in substance the same as Crim. Prac. Act, Stats. 1851, p. 255, § 396. **Court to decide questions of law:** See post, §§ 1126, 1489.

**Jury to determine law and fact in libel:** See ante, § 251; post, §§ 1125, 1126.

**On trial for libel jury to determine law and fact.**

§ 1125. On a trial for libel, the jury has the right to determine the law and the fact.

**Legislation § 1125.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 418); in substance the same as Crim. Prac. Act, Stats. 1851, p. 255, § 397. When enacted in 1872, § 1125 read: "1125. On the trial of an indictment for libel, the jury have the right to determine the law and the fact." 2. Amended by Code Amdts. 1880, p. 23.

**Same principle:** Const. 1879, art. i, § 9.



**In all other cases court to decide questions of law.**

§ 1126. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

**Legislation § 1126.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 419); based on Crim. Prac. Act, Stats. 1851, p. 255, § 398, which read: "§ 398. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury, and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court." 2. Amended by Code Amdts. 1880, p. 23, changing "On the trial of an indictment for" to "On a trial for."

**Citations.** Cal. 113/572. App. 4/68.

**In libel:** See Const. 1879, art. i, § 9. See also ante, §§ 251, 1125.

**Court to decide questions of law:** See ante, § 1124; post, § 1439.

**Duty of court in charging jury.**

§ 1127. In charging the jury the court must state to them all matters of law necessary for their information. All instructions given (except such as might incidentally be given during the admission of evidence) shall be in writing, unless both parties request the giving of an oral instruction, or consent thereto, and when so given orally, all instructions must be taken down by the phonographic reporter. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

**Legislation § 1127.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 420); based on Crim. Prac. Act, Stats. 1851, p. 255, §§ 399, 400, 401, which read: "§ 399. In charging the jury the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict. § 400. Either party may present to the court any written charge and request that it may be given. If the court think it correct and pertinent it shall be given, if not it shall be refused. § 401. Upon each charge so pre-

sented and given or refused the court shall indorse its decision and shall sign it. If part be given and part refused the court shall distinguish, showing by the indorsement what part of the charge was given and what part refused." When enacted in 1872, § 1127 did not contain the second sentence of the present section, beginning "All instructions given." 2. Amended by Stats. 1897, p. 184, adding the second sentence.

**Citations.** Cal. 58/252; 69/287; 77/181; 78/2; 98/660; 105/672; 114/557; 128/489; 127/547; 131/658; 135/445; 139/111. App. 3/223; 6/339. Crim. Prac. Act: Cal. (§ 399) 32/43; (§ 400) 44/599; (§ 401) 44/599.

**Instructions:** See ante, § 1098.

**Charging jurors upon questions of fact:** Ante, § 1098, subd. 6.

**Oral instructions to be taken down:** Ante, § 1098, subd. 6.

**Presumption of innocence:** Ante, § 1096.

**Indorsement of decision on instructions:** See post, § 1176.

### **Jury may decide in court or retire in custody of officer. Oath of officers.**

§ 1128. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

**Legislation § 1128.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 421); based on Crim. Prac. Act, Stats. 1851, p. 255, § 402, which read: "§ 402. After hearing the charge the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to them, nor to speak to them themselves unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed."

**Citations.** Cal. 111/85; 148/210, 212. App. 7/697. Crim. Prac. Act: Cal. (§ 402) 21/388.

**Oath and duty of officer in charge of jury:** See post, § 1440.

### **When defendant on bail appears for trial he may be committed.**

§ 1129. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer

of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

**Legislation § 1129.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 422); in substance the same as Crim. Prac. Act, Stats. 1851, p. 256, § 403. Citations. Cal. 59/676; 150/667.

**If district attorney fails to attend, court may appoint.**

§ 1130. If the district attorney fails to attend at the trial, the court must appoint some attorney at law to perform the duties of the district attorney on such trial.

**Legislation § 1130.** Enacted February 14, 1872; based on "An Act concerning District Attorneys," Stats. 1851, p. 188, § 5, which read: "§ 5. If he [the district attorney] fails to attend any term of those courts, [the district courts,] the court shall designate some other person to perform the duties of district attorney during his absence from the court, who shall receive a reasonable compensation, to be certified by the court, and paid from the county treasury."

Citations. Cal. 98/142; 185/414, 415.

District attorney, duties of: Pol. Code, §§ 4158-4156a.

Argument: Ante, § 1098, subd. 5.

Number of counsel: Ante, § 1095.

Order of argument: Ante, § 1098, subd. 5.

**When allegations of embezzlement sustained.**

§ 1131. Upon a trial for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank notes, certificates of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates of stock, or valuable security, be not proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank note, certificate of stock, or valuable security, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Legislation § 1131. 1. Added by Code Amdts. 1873-74, p. 445. 2. Amended by Code Amdts. 1880, p. 24, inserting "or information" after "indictment."

Citations. Cal. 56/80; 66/277; 69/287; 108/541.

### CHAPTER III.

#### Conduct of the Jury after the Cause is Submitted to Them.

- § 1185. Room and accommodations for the jury after retirement, how provided.
- § 1186. Juries to be supplied with food and lodging.
- § 1187. What papers the jury may take with them.
- § 1188. Return of jury for information.
- § 1189. If juror after retirement becomes sick, etc., jury to be discharged.
- § 1140. Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.
- § 1141. When jury discharged or prevented from giving a verdict, cause to be again tried.
- § 1142. Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.
- § 1143. Jurors' fees. Payment of same.

#### Room and accommodations for the jury after retirement, how provided.

§ 1135. A room must be provided by the supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the supervisors neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Legislation § 1135. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 423); in substance the same as Crim. Prac. Act, § 404, as amended by Stats. 1868, p. 160, § 16.

Citations. Cal. 148/210. App. 1/571.

Jury expenses: See Pol. Code, § 4844, subd. 2.

#### Juries to be supplied with food and lodging.

§ 1136. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court must direct the sheriff to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. And the auditor, upon the order of the court, shall draw his warrant for the expenses

so incurred, and the same shall be paid by the treasurer of the county, or city and county, out of the general fund.

**Legislation § 1136.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 424); in substance the same as Crim. Prac. Act, Stats. 1851, p. 256, § 405. When enacted in 1872, § 1136 read: "1136. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging." 2. Amended by Stats. 1901, p. 654.

**Citations.** Cal. 61/186, 188; 78/886; 111/85; 148/210.

#### **What papers the jury may take with them.**

§ 1137. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

**Legislation § 1137.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 425, 426); based on Crim. Prac. Act, Stats. 1851, p. 256, §§ 406, 407, which read: "§ 406. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not in the opinion of the court to be taken from the person having them in possession. § 407. The jury may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person." The code commissioners say: "It heretofore rested in the discretion of the court to permit the jury to take the instructions with them to the jury-room. It was frequently cause for their return to inquire in regard to the instructions; hence the necessity and propriety of the change."

**Citations.** Cal. 61/551, 553; 74/485; 120/11; 146/481, 482.

#### **Return of jury for information.**

§ 1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or

after notice to, the district attorney, and the defendant or his counsel, or after they have been called.

**Legislation § 1138.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 427); in substance the same as Crim. Prac. Act, Stats. 1851, p. 256, § 408. 2. Amended by Code Amdts. 1873-74, p. 445, (1) in first sentence, changing "if there is" to "if there be," and (2) adding "or after they have been called" at end of section.

**Citations.** Cal. 53/575; 65/569; 111/85. App. 1/571. Crim. Prac. Act: Cal. (§ 408) 29/627, 629; 87/276.

**If juror after retirement becomes sick, etc., jury to be discharged.**

§ 1139. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

**Legislation § 1139.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 428); in exact language of Crim. Prac. Act, Stats. 1851, p. 256, § 409.

**Proceedings where juror becomes sick:** See ante, § 1128.

**Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.**

§ 1140. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

**Legislation § 1140.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 428); in substance the same as Crim. Prac. Act, Stats. 1851, p. 256, § 410.

**Citations.** Cal. 76/59; 97/401; 100/142; 152/78.

**When jury discharged or prevented from giving a verdict, cause to be again tried.**

§ 1141. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried.

**Legislation § 1141.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 430); in substance the same as Crim. Prac. Act, Stats. 1851, p. 256, § 411.

## 537 CONDUCT OF JURY AFTER CAUSE IS SUBMITTED. § 1143

When enacted in 1872, § 1141 read: "1141. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term." 2. Amended by Code Amdts. 1880, p. 24.

**New trial:** See post, § 1181.

**Jeopardy:** See ante, § 687.

**Discharge without verdict, retrial of cause:** See post, § 1147.

**Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.**

§ 1142. While the jury are absent the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

**Legislation § 1142.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 431); in substance the same as Crim. Prac. Act, Stats. 1851, p. 257, § 412.

**Citations.** Cal. 65/821.

**Jurors' fees. Payment of same.**

§ 1143. The fees of jurors in the superior courts of the state, in criminal cases, shall be two dollars, in lawful money of the United States, for each day's attendance, and mileage, to be computed at the rate of fifteen cents per mile for each mile necessarily traveled in attending court, in going only. Such fees and mileage shall be paid by the treasurer of the county, or city and county, in which the juror's services were rendered, out of the general fund of said county, or city and county, upon warrants drawn by the county auditor upon the written order of the judge of the court in which said juror was in attendance, and the treasurer of said county, or city and county, shall pay said warrants. The board of supervisors of each county, or city and county, is hereby directed to make suitable appropriation for the payment of the fees herein provided for.

**Legislation § 1143.** Added by Stats 1901, p. 290. The original code § 1143 read, "A final adjournment of the court discharges the jury," and was repealed by Code Amdts. 1880, p. 6.

**Citations.** Cal. 188/267, 269, 271, 278.

## CHAPTER IV.

## The Verdict.

- § 1147. Return of jury.
- § 1148. Appearance of defendant.
- § 1149. Manner of taking verdict.
- § 1150. Verdict may be general or special.
- § 1151. General verdict.
- § 1152. Special verdict.
- § 1153. Special verdict, how rendered.
- § 1154. Form of special verdict.
- § 1155. Judgment on special verdict.
- § 1156. When special verdict defective, new trial to be ordered.
- § 1157. Jury to find degree of crime.
- § 1158. Jury may find upon charge of previous conviction.
- § 1159. Jury may convict of a lesser offense or of an attempt.
- § 1160. Verdict as to some defendants and another trial as to others.
- § 1161. In what cases court may direct a reconsideration of the verdict.
- § 1162. When judgment may be given on informal verdict.
- § 1163. Polling the jury.
- § 1164. Recording the verdict.
- § 1165. Defendant, when to be discharged or detained after acquittal.
- § 1166. Proceedings upon general verdict of conviction or a special verdict.
- § 1167. Proceedings on acquittal on ground of insanity.

## Return of jury.

§ 1147. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried.

Legislation § 1147. 1. Enacted February 14, 1873 (N. Y. Code Crim. Proc. § 433); in substance the same as Crim. Prac. Act, Stats. 1851, p. 257, § 414. 2. Amendment by Stats. 1901, p. 488; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 697, omitting "at the same, or another term," at end of section; the code commissioner saying, "because there are now no terms of court."

Citations. Cal. 57/100; 62/519, 520. Crim. Prac. Act: Cal. (§ 414) 44/541; 62/520.

Discharge without verdict, retrial of cause: See ante, § 1411.

Proceedings when verdict reached: See post, § 1164.



**Appearance of defendant.**

§ 1148. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

**Legislation § 1148.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 434); in substance the same as Crim. Prac. Act, Stats. 1851, p. 257, § 415. 2. Amended by Code Amdts. 1880, p. 24, changing "If indicted for" to "If charged with."

**Citations.** Cal. 49/42; 57/352; 59/358; 70/472; 118/449. Crim. Prac. Act: Cal. (§ 415) 88/100; 42/168.

**Judgment in defendant's presence:** See post, § 1193.

**Manner of taking verdict.**

§ 1149. When the jury appear they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

**Legislation § 1149.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 435); in substance the same as Crim. Prac. Act, Stats. 1851, p. 257, § 416. **Citations.** Cal. 62/519; 94/119.

**Verdict may be general or special.**

§ 1150. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

**Legislation § 1150.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 436); based on Crim. Prac. Act, Stats. 1851, p. 257, § 417, which read: "§ 417. The jury may either render a verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, file a special verdict." 2. Amended by Code Amdts. 1880, p. 24, changing "an indictment" for "a trial."

**General verdict.**

§ 1151. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the

ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

**Legislation § 1151.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 487, 454); based on Crim. Prac. Act, Stats. 1851, p. 257, § 418, which read: "§ 418. A general verdict upon a plea of not guilty, is either 'guilty' or 'not guilty,' which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either 'for the people' or 'for the defendant.'" When enacted in 1872, the section was composed of the first two sentences of the present section. 2. Amended by Code Amdts. 1873-74, p. 446, adding the last two sentences.

**Citations.** Cal. 51/279; 65/446; 68/181; 78/846; 84/478; 87/288; 184/808. Crim. Prac. Act: Cal. (§ 418) 81/453, 454.

**Form of verdict:** See post, § 1158.

### **Special verdict.**

§ 1152. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

**Legislation § 1152.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 488); in exact language of Crim. Prac. Act, Stats. 1851, p. 257, § 419.

**Citations.** Crim. Prac. Act: Cal. (§ 419) 81/458, 454.

### **Special verdict, how rendered.**

§ 1153. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury and agreed to by them, before they are discharged.

**Legislation § 1153.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 439); in exact language of Crim. Prac. Act, Stats. 1851, p. 257, § 420.

### **Form of special verdict.**

§ 1154. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

**Legislation § 1154.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 440); in substance the same as Crim. Prac. Act, Stats. 1851 p. 257, § 421.

**Judgment on special verdict.**

§ 1155. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

**Legislation § 1155.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 442); based on Crim. Prac. Act, Stats. 1851, p. 257, § 422, which read: "§ 422. The court shall give judgment upon the special verdict, as follows: 1st. If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted as provided in section four hundred and twenty-four, under that indictment judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offense charged, or of any offense of which he could be so convicted under the indictment, judgment of acquittal shall be given. 2d. If the plea be a former conviction or acquittal of the same offense, the court shall give judgment of acquittal or conviction according as the facts prove or fail to prove the former conviction or acquittal."

**Citations.** Cal. 98/568. Crim. Prac. Act: Cal. (§ 422) 31/454.

**Plea of former judgment of conviction or acquittal:** See ante, § 1016, subd. 3.

**When special verdict defective, new trial to be ordered.**

§ 1156. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the court must order a new trial.

**Legislation § 1156.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 443); in substance the same as Crim. Prac. Act, Stats. 1851, p. 258, § 423.

**Citations.** Crim. Prac. Act: Cal. (§ 423) 31/454.

**New trial:** See post, § 1181.

**Jury to find degree of crime.**

§ 1157. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

**Legislation § 1157.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 21, as amended by Stats. 1856, p. 219, § 2; the clause of § 21 on which the code section is based reading, "and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict, whether it be murder of the first or second degree."

**Citations.** Cal. 49/179; 52/454; 53/627; 59/384; 60/110; 65/538; 67/351; 68/180; 73/581; 81/618; 94/386; 134/308; 135/62.

### **Jury may find upon charge of previous conviction.**

§ 1158. Whenever the fact of a previous conviction of another offense is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction.

**Legislation § 1158.** 1. Enacted February 14, 1872, and then read: "1158. Whenever the fact of a previous conviction is charged in an indictment, the jury, if they find a verdict of guilty, must also find whether or not the defendant had suffered such previous conviction." 2. Amended by Code Amdts. 1873-74, p. 446, (1) the first sentence then reading, "Whenever the fact of a previous conviction of another offense is charged in an indictment, the jury, if they find a verdict of guilty of the offense for which he is indicted, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction"; (2) the remainder of the section (added in 1873-74) reading as at present. 3. Amended by Code Amdts. 1880, p. 24.

**Citations.** Cal. 49/395; 57/560, 572; 64/155, 840, 408; 65/297, 398; 73/445, 446, 447, 450, 451, 452, 549, 550; 109/297; 110/42; 118/389, 390; 145/610, 611. App. 4/215.

**Form of verdict:** See ante, § 1151.

**Judgment on special verdict:** See ante, § 1155.

### **Jury may convict of a lesser offense or of an attempt.**

§ 1159. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

**Legislation § 1159.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 445); based on Crim. Proc. Act, Stats. 1851, p. 258, § 424, which

read: " § 424. In all cases the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense charged." 2. Amended by Code Amdts. 1880, p. 24, omitting "in the indictment" after "charged."

Citations. Cal. 58/59; 56/80; 59/364; 65/475; 76/58; 91/272; 93/659; 99/229; 100/153, 154, 158; 105/672; 115/305; 135/62, 270; 136/524; 137/197; 138/484; 142/13, 14, 149; 143/435; 144/47. App. 2/279. Crim. Prac. Act: Cal. (§ 424) 5/134; 29/628; 31/454.

Attempt to commit crime: See ante, § 668.

### Verdict as to some defendants and another trial as to others.

§ 1160. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

Legislation § 1160. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 446); in substance the same as Crim. Prac. Act, Stats. 1851, p. 258, § 425. 2. Amended by Code Amdts. 1880, p. 25, inserting "or information" after "On an indictment."

Citations. Cal. 67/418.

Joint defendants, verdict as to some, new trial as to others: See post, § 1442.

### In what cases court may direct a reconsideration of the verdict.

§ 1161. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially and to leave the judgment to the court.

Legislation § 1161. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 447, 448); in substance the same as Crim. Prac. Act, Stats. 1851, p. 258, §§ 426, 427.

Citations. Cal. 48/559; 68/180, 181; 118/448. Crim. Prac. Act: Cal. (§ 427) 31/454.

**When judgment may be given on informal verdict.**

§ 1162. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

Legislation § 1162. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 449); in substance the same as Crim. Prac. Act, Stats. 1851, p. 258, § 428.  
Citations. Cal. 68/180; 185/62, 68. App. 1/322.

**Polling the jury.**

§ 1163. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Legislation § 1163. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 450); based on Crim. Prac. Act, Stats. 1851, p. 258, § 429, which read: "§ 429. When a verdict is rendered and before it is recorded the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative the jury shall be sent out for further deliberation."  
Citations. Cal. 57/101; 62/520.

**Recording the verdict.**

§ 1164. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Legislation § 1164. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 451); in substance the same as Crim. Prac. Act, Stats. 1851, p. 258, § 430.  
Citations. Cal. 57/98, 101.  
Proceedings where verdict reached: See ante, § 1147.

**Defendant, when to be discharged or detained after acquittal.**

§ 1165. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must

be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in section one thousand one hundred and seventeen.

**Legislation § 1165.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 452); in substance the same as Crim. Prac. Act, Stats. 1851, p. 259, § 481. 2. Amended by Code Amdts. 1880, p. 25, (1) substituting "pleading and proof" for "proof and the indictment," and (2) adding "or information" after "indictment" in both instances.

**Citations.** Cal. 61/140; 64/268; 70/65; 79/179, 181; 91/648; 118/27. Crim. Prac. Act: Cal. (§ 481) 89/476.

**Jeopardy:** See ante, § 687.

**Discharge of defendant on verdict of acquittal:** See post, § 1447.

**Acquittal on ground of variance, effect of:** See ante, § 1021.

**Discharge on acquittal:** See post, §§ 1447, 1454.

#### **Proceedings upon general verdict of conviction or a special verdict.**

§ 1166. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

**Legislation § 1166.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 458); in substance the same as Crim. Prac. Act, Stats. 1851, p. 259, § 482.

**Citations.** Cal. 68/182.

**Bail:** See post, §§ 1268 et seq.

**Exoneration of bail on commitment of defendant:** See post, § 1371.

#### **Proceedings on acquittal on ground of insanity.**

§ 1167. If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury-list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing

insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.

**Legislation** § 1167. 1. Added by Code Amdts. 1873-74, p. 446 (N. Y. Code Crim. Proc., § 454). 2. Amendment by Stats. 1901, p. 488; unconstitutional: See note, § 5, ante.

**Inquiry into insanity of defendant before trial or after conviction:** See post, §§ 1367 et seq.

## CHAPTER V.

### Bills of Exception.

- § 1170. Upon what exceptions may be taken to decision of jury. [Repealed.]
- § 1171. When to be settled and signed. [Repealed.]
- § 1172. Exceptions may be taken to decision of court or judge. [Repealed.]
- § 1173. Exceptions not taken on the trial, but which may be taken by the defendant. [Repealed.]
- § 1174. How to be settled. [Repealed.]
- § 1175. What bill of exceptions is to contain. [Repealed.]
- § 1176. Written charges need not be excepted to.
- § 1177. Bills of exceptions in criminal actions, amendment of. Settled, and time fixed for engrossment. [Repealed.]

§ 1170. [Upon what exceptions may be taken to decision of jury. Repealed.]

**Legislation** § 1170. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 455); in exact language of Stats. 1851, p. 259, § 433. 2. Amended by Code Amdts. 1873-74, p. 447. 3. Amended by Code Amdts. 1880, p. 25. 4. Amended by Stats. 1901, p. 81. 5. Amendment by Stats. 1901, p. 488; unconstitutional: See note, § 5, ante. 6. Repealed by Stats. 1909, p. 1088.

**Citations.** Cal. 49/169; 51/470, 496; 53/184, 603; 56/535; 59/355; 61/549, 553; 70/11; 83/381; 87/120; 96/126, 184, 137, 140; 115/167; 123/491; 124/553; 132/142; 134/535; 135/373, 375; 142/93; (subd. 2) 123/488; (subd. 3) 134/544; 135/374; 145/738. App. 1/72, 74; 7/688; 8/141; (subd. 8) 1/73. Crim. Prac. Act: Cal. (§ 438) 28/218; 45/142.

**Challenges to jury:** See ante, §§ 1055 et seq.

**Trial of challenges:** See ante, §§ 1078 et seq.

**Rules of evidence:** See ante, § 1102.

§ 1171. [When to be settled and signed. Repealed.]

**Legislation** § 1171. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 457); in substance the same as Crim. Prac. Act, Stats. 1851, p. 259, § 484. 2. Amended by Code Amdts. 1873-74, p. 447. 3. Amended by Stats. 1881, p. 6. 4. Amended by Stats. 1901, p. 488; unconstitutional: See note,



§ 5, ante. 5. Amended by Stats. 1905, p. 761. 6. Repealed by Stats. 1909, p. 1088.

Citations. Cal. 51/470; 53/184, 423, 425; 55/73; 76/514; 77/356; 78/406; 86/157; 94/506; 106/645, 646; 115/167; 122/210; 185/373; 136/20, 669, 670; 142/98. App. 3/164, 166, 168; 7/561, 562, 563; 8/141, 324, 327. Crim. Prac. Act: Cal. (§ 434) 28/218.

§ 1172. [Exceptions may be taken to decision of court or judge. Repealed.]

Legislation § 1172. 1. Enacted February 14, 1872. 2. Amended by Stats. 1885, p. 58. 3. Repealed by Stats. 1909, p. 1088.

Citations. Cal. 55/74; 56/535; 65/175; 107/478; 115/161, 167; 121/495; 132/142; 138/32; (subd. 5) 136/21. App. 6/268; 7/30, 688; 8/596.

Arrest of judgment: See post, §§ 1185-1188.

New trial: See post, §§ 1179-1182.

§ 1173. [Exceptions not taken on the trial, but which may be taken by the defendant. Repealed.]

Legislation § 1173. 1. Enacted February 14, 1872. 2. Repealed by Stats. 1909, p. 1088.

Citations. Cal. 55/74; 56/535; 65/175; 115/167; 132/142; 138/33; (subd. 2) 151/668; 154/364.

§ 1174. [How to be settled. Repealed.]

Legislation § 1174. 1. Enacted February 14, 1872. 2. Amended by Code Amdts. 1873-74, p. 448. 3. Amended by Stats. 1901, p. 489; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 761. 5. Repealed by Stats. 1909, p. 1088.

Citations. Cal. 51/321; 53/184; 55/74; 56/119; 73/2; 74/190; 76/284; 77/356; 78/346, 347; 103/32; 119/57; 121/281, 495; 136/21, 669; 138/88; 151/668; 152/603; 154/364, 519. App. 3/164, 168; 6/268; 7/30, 561, 562, 563; 8/324, 325, 326, 327, 431, 432, 596, 603, 604.

§ 1175. [What bill of exceptions is to contain. Repealed.]

Legislation § 1175. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 259, §§ 436, 437. 2. Repealed by Stats. 1909, p. 1088.

Citations. Cal. 51/321; 52/212; 76/285, 351; 80/157, 483; 121/281; 145/68. Crim. Prac. Act: Cal. (§ 436) 28/218; (§ 437) 28/218.

**Written charges need not be excepted to.**

§ 1176. When written instructions have been presented, and given, modified, or refused, or when the charge of the court has been taken

down by the reporter, the questions presented in such instructions or charge need not be excepted to or embodied in a bill of exceptions; but the judge must make and sign an indorsement upon such instructions, showing the action of the court thereon, and certify to the correctness of the reporter's transcript of the charge; and thereupon the same, with the indorsements, become a part of the record, and any error in the action of the court thereon may be reviewed on appeal in like manner as if presented in a bill of exceptions.

Legislation § 1176. 1. Enacted February 14, 1872 (in substance the same as Crim. Prac. Act, Stats. 1851, p. 260, § 488), and then read: "1176. When written charges have been presented, given, or refused, or when the charges have been taken down by the reporter, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges or the report, with the indorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions." 2. Amendment by Stats. 1901, p. 489; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 762; the code commissioner saying, "The purpose of this amendment is to correct imperfections and confusion in the language of the former section, and to more clearly point out the duty of the judge in noting his action upon instructions requested by the parties."

Citations. Cal. 77/180, 181; 84/581; 106/86; 111/259; 115/161; 118/829; 127/547. Crim. Prac. Act: Cal. (§ 488) 28/218; 37/276; 40/287; 44/598.

Instructions part of judgment-roll: See post, § 1207, subd. 3.

Grounds for new trial in justice's or police court: See post, § 1451.

§ 1177. [Bills of exceptions in criminal actions, amendment of. Settled, and time fixed for engrossment. Repealed.]

Legislation § 1177. Added by Stats. 1905, p. 475. 2. Repealed by Stats. 1909, p. 1083.

## CHAPTER VI.

## New Trials.

- § 1179. New trial defined.
- § 1180. Effect of granting.
- § 1181. In what cases it may be granted.
- § 1182. Application for, when made.

**New trial defined.**

§ 1179. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

Legislation § 1179. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 462); in exact language of first sentence of Crim. Prac. Act, Stats. 1851, p. 260, § 439.

Citations. Cal. 72/15. Crim. Prac. Act: Cal. (§ 439) 4/377, 380; 46/48. Indorsement of decision on instructions: See ante, § 1127.

**Effect of granting.**

§ 1180. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment.

Legislation § 1180. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 464); in substance the same as the second and third sentences of Crim. Prac. Act, Stats. 1851, p. 260, § 439. 2. Amended by Code Amdts. 1873-74, p. 449, adding, at end of section, "or be pleaded in bar of any conviction which might have been had under the indictment."

Citations. Cal. 99/231, 232; 188/485, 486. App. 8/620.

**In what cases it may be granted.**

§ 1181. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony;
2. When the jury has received any evidence out of court other than that resulting from a view of the premises;
3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any mis-

conduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

**Legislation § 1181.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 465); in substance the same as Crim. Prac. Act, § 440, as amended by Stats. 1868, p. 161, § 17.

**Citations.** Cal. 58/184; 70/472; 74/487; 88/490; 90/199; 102/382; 115/304; 119/2; 129/568; 185/371; 146/130; 151/305, 307, 308, 311; (subd. 2) 71/398; 122/188; (subd. 3) 74/488, 485; 78/384, 335; 125/507; 139/216; 143/210, 589; (subd. 4) 76/575; (subd. 5) 56/118; 185/373; 151/306, 312; (subd. 6) 56/118; 151/306, 312. App. 1/72, 74; 7/697, 701; (subd. 3) 7/701. Crim. Prac. Act: Cal. (§ 440) 18/699; 21/339; 33/100; 43/56, 167.

#### **Application for, when made.**

§ 1182. The application for a new trial must be made before judgment, and the order granting or denying the same must be immediately entered by the clerk in the minutes.

**Legislation § 1182.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 466); in substance the same as Crim. Prac. Act, Stats. 1851, p. 260, § 441. When enacted in 1872, § 1182 read: "1182. The application for a new trial must be made before judgment." 2. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 697; the code commissioner saying of the addition, that it "is designed to conform the section to the present practice."

**Citations.** Cal. 80/488; 98/355; 185/371; 142/92, 97. App. 7/30.

## CHAPTER VII.

## Arrest of Judgment.

- § 1185. Motion in arrest of judgment.
- § 1186. Court may arrest judgment on own motion.
- § 1187. Effect of arresting judgment.
- § 1188. Defendant, when to be held or discharged.

**Motion in arrest of judgment.**

§ 1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction. It may be founded on any of the defects in the indictment or information mentioned in section ten hundred and four, unless the objection has been waived by a failure to demur, and must be made and determined before the judgment is pronounced. When determined, the order must be immediately entered by the clerk in the minutes.

**Legislation § 1185.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 467); based on Crim. Prac. Act, Stats. 1851, p. 260, §§ 442, 444, which read: "§ 442. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section two hundred and eighty-nine." "§ 444. The motion must be made before or at the time when the defendant is called for judgment." When enacted in 1872, § 1185 read: "1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 1004, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment." 2. Amended by Code Amdts. 1880, p. 25, in second sentence, (1) adding "or information" after "indictment," and (2) omitting "to the indictment" after "objection." 3. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 697, adding the final sentence, which read as at present; the code commissioner saying that the addition "is designed to conform this section to the present practice." 5. Amended by Stats. 1909, p. 1087, (1) omitting "or acquittal" from end of first sentence; (2) substituting the final words of the present second sentence for "and must be made before or at the time the defendant is called for judgment."

Citations. Cal. 48/252; 49/390; 56/535; 58/225; 71/389, 392; 77/33; 82/621; 90/199; 98/128; 103/428, 677; 122/143; 127/549; 131/250; 145/503. Crim. Prac. Act: Cal. (§ 442) 27/401, 402; 29/262; 37/279.

Indictment, sufficiency of: See ante, § 960.

Grounds of demurrer to indictment or information: See ante, § 1004.

Waiver by failure to move to set aside indictment or information: See ante, § 996.

Waiver of defects by failure to demur: See ante, § 1012.

Time to make motion in arrest of judgment: See post, § 1450.

#### Court may arrest judgment on own motion.

§ 1186. The court may, on its own motion, at any time before judgment is pronounced, arrest the judgment for any of the defects mentioned in the last section, by order for that purpose entered upon its minutes.

Legislation § 1186. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 468); based on Crim. Prac. Act, Stats. 1851, p. 261, § 443, which did not have the words "any of" before "these defects." When enacted in 1872, § 1186 read: "1186. The court may also, on its own view of any of these defects, arrest the judgment without motion." 2. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 698, to read: "1186. The court may also, of its own motion, arrest the judgment for any of the defects mentioned in the last section, by an order for that purpose entered upon its minutes." See code commissioner's note to amendment of § 1185 in 1905. 4. Amended by Stats. 1909, p. 1088.

Citations. Crim. Prac. Act: Cal. (§ 443) 81/626; 44/34.

#### Effect of arresting judgment.

§ 1187. The effect of an order arresting the judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed.

Legislation § 1187. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 470); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, § 445. When enacted in 1872, § 1187 read: "1187. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found." 2. Amended by Code Amdts. 1880, p. 25, adding at end of section, "or information filed." 3. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 698, substituting "an order arresting the judgment" for "allowing a motion in arrest of judgment"; the code commissioner saying, "The purpose of this amendment is to give the same effect to an order of the court made on its own motion under § 1186 as § 1187 now gives to an order made on motion of the defendant."

Citations. Cal. 73/406; 74/98. Crim. Prac. Act: Cal. (§ 445) 44/34.

**Defendant, when to be held or discharged.**

§ 1188. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded.

**Legislation § 1188.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 470); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, § 446. 2. Amended by Code Amdts. 1880, p. 25, (1) in first sentence, adding "or information" after "indictment" in both instances; (2) in second sentence, omitting "or indictment" after "prosecution"; (3) in final sentence, adding "or information" after "indictment."

**Citations.** Cal. 64/268; 74/98; 109/296. Crim. Prac. Act: Cal. (§ 446) 44/84.

**Discharge of defendant:** See post, § 1485.

## TITLE VIII.

## Judgment and Execution.

Chapter I. The Judgment. §§ 1191-1207.

II. The Execution. §§ 1213-1230.

## CHAPTER I.

## The Judgment.

- § 1191. Judgment, time for pronouncing.
- § 1192. Upon plea of guilty, court must determine degree.
- § 1192a. Inquiry as to causes of criminal conduct. Notice to clerk of prison.
- § 1193. Presence of defendant.
- § 1194. When defendant in custody, how brought before the court for judgment.
- § 1195. How brought before the court when on bail.
- § 1196. Bench-warrant to issue.
- § 1197. Form of bench-warrant.
- § 1198. Warrant, how served.
- § 1199. Arrest of defendant.
- § 1200. Arraignment of defendant for judgment.
- § 1201. What causes may be shown against judgment.
- § 1202. New trial, defendant entitled to, if judgment not pronounced.
- § 1203. Summary hearing. Suspension of sentence. When judgment is to pay a fine. Probation officer may rearrest. Revocation of suspension. Court may modify order. Change of plea.
- § 1204. Proof of former conviction or of facts, etc., in mitigation, etc., how made.
- § 1205. Imprisonment for fine.
- § 1206. Judgment to pay fine constitutes a lien.
- § 1207. Entry of judgment.

## Judgment, time for pronouncing.

§ 1191. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court must appoint a time for pronouncing judgment, which must not be less than two, nor more than five days after the verdict or plea of guilty; provided, however, that the court may extend the time not more than ten days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment; and provided further, that the court may extend the time not more



than twenty days in any case where the question of probation is considered, in accordance with section twelve hundred and three of this code. If in the opinion of the court there is a reasonable ground for believing a defendant insane, the court may extend the time of pronouncing sentence until the question of insanity has been heard and determined, as provided in chapter six, title ten, part two of this code.

**Legislation § 1191.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 471, 472); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, §§ 447, 448. When enacted in 1872, § 1191 read: "1191. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which must be at least two days after the verdict, if the court intend to remain in session so long; or if not, as remote a time as can reasonably be allowed. But in no case can the judgment be rendered in less than six hours after the verdict." 2. Amended by Code Amdts. 1873-74, p. 449, to read: "1191. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed." 3. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 763, to read: "1191. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict." 5. Amended by Stats. 1909, p. 898.

**Citations.** Cal. 46/96; 65/174; 79/632; 88/174, 177. Crim. Prac. Act: Cal. (§ 447) 45/164.

**Upon plea of guilty, court must determine degree.**

§ 1192. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

**Legislation § 1192.** Enacted February 14, 1872; based on Crimes and Punishment Act, § 21, as amended by Stats. 1856, p. 219, § 2; so much of § 21 as relates to the code section reading, "but if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime and give sentence accordingly."

**Citations.** Cal. 49/178; 52/458, 454, 456; 67/114; 78/582; 137/646; 141/551, 552. App. 5/543.

**Inquiry as to causes of criminal conduct. Notice to clerk of prison.**

§ 1192a. Before judgment is pronounced upon any person convicted of an offense punishable by imprisonment in the state prison, it shall be the duty of the court, assisted by the district attorney, to ascertain, in a summary manner, and by such evidence as is obtainable, whether such person has learned and practiced any mechanical or other trade, and also such other facts tending to indicate the causes of the criminal character or conduct of such convicted person, or calculated to be of assistance to the court in determining the proper punishment of such person, or to the state board of prison directors in the performance of the duties imposed upon it by law, as the court shall deem proper. Within thirty days after judgment has been pronounced, the judge and the district attorney respectively shall cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed. Within twenty days after the filing of such statement, the clerk of the court shall mail a copy thereof, certified by such clerk, with the postage thereon prepaid, addressed to the clerk of the prison to which such convicted person shall have been sentenced. The testimony pursuant to the provisions of this section shall be reported and transcribed by the clerk or official reporter. Within thirty days after judgment has been pronounced by the court, one copy of such transcript shall be filed with the clerk of the court, and another copy thereof shall be sent by mail, with postage prepaid, addressed to the warden of the prison to which such convicted person shall have been sentenced.

Legislation § 1192a. Added by Stats. 1909, p. 365.

**Presence of defendant.**

§ 1193. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Legislation § 1193. Enacted February 14, 1872 (N. Y. Code Crim. Proc. § 473); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, § 449. Citations. Cal. 68/180; 79/632. Crim. Prac. Act: Cal. (§ 449) 37/279; 42/168.

Verdict in defendant's presence: See ante, § 1148.

**When defendant in custody, how brought before the court for judgment.**

§ 1194. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

Legislation § 1194. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 474); based on Crim. Prac. Act, Stats. 1851, p. 261, § 450, which read: "§ 450. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer shall do so accordingly."

**How brought before the court when on bail.**

§ 1195. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

Legislation § 1195. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 475); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, § 451. Citations. Cal. 68/180.

Forfeiture of bail, when ordered: See post, § 1805.

**Bench-warrant to issue.**

§ 1196. The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a bench-warrant into one or more counties.

Legislation § 1196. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 476); in substance the same as Crim. Prac. Act, Stats. 1851, p. 261, § 452. Issuance of bench-warrant: See ante, § 980.

**Form of bench-warrant.**

§ 1197. The bench-warrant must be substantially in the following form: County of ——. The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State: A. B., having been on the — day of —, A. D. eighteen [nineteen] hundred and —, duly convicted in the superior court of the county of —, of the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above-named A. B., and bring him before that court for judgment. Given under my hand, with the seal

of said court affixed, this — day of —, A. D. eighteen [nineteen] hundred and —. By order of the court. [Seal.] E. F., Clerk.

**Legislation § 1197.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 477); in substance the same as Crim. Prac. Act, § 453, as amended by Stats. 1863, p. 161, § 18, except that it did not have the words "or municipal court" (added in the original code section). When enacted in 1872, § 1197 read: "1197. The bench-warrant must be substantially in the following form: County of —. The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State: A. B., having been on the — day of —, A. D. eighteen hundred and —, duly convicted in the county court (or district court, or municipal court, as the case may be) of the county of —, of the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above-named A. B., and bring him before that court for judgment; or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of —. Given," etc., as in the amendment of 1880 (the present section). 2. Amended by Code Amdts. 1880, p. 34.

**Citations.** Cal. 68/180.

#### **Warrant, how served.**

§ 1198. The bench-warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county.

**Legislation § 1198.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 478); in exact language of Crim. Prac. Act, Stats. 1851, p. 262, § 454.

**How served:** Compare ante, § 988.

#### **Arrest of defendant.**

§ 1199. Whether the bench-warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant, according to the command thereof.

**Legislation § 1199.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 479); in substance the same as Crim. Prac. Act, Stats. 1851, p. 262, § 455.

#### **Arraignment of defendant for judgment.**

§ 1200. When the defendant appears for judgment he must be informed by the court, or by the clerk, under its direction, of the nature of the charge against him and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

**Legislation § 1200.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 480); in substance the same as Crim. Prac. Act, Stats. 1851, p. 262, § 456. 2. Amended by Code Amdts. 1880, p. 26, changing "nature of the indictment" to "nature of the charge against him."

**Citations.** Cal. 64/372; 70/470; 87/128; 88/120, 142, 175, 178; 102/281; 114/355; 118/890; 132/140; 142/97. Crim. Prac. Act: Cal. (§ 456) 81/626.

### **What causes may be shown against judgment.**

§ 1201. He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him insane, the question of insanity must be tried as provided in chapter six, title ten, part two of this code. If, upon the trial of that question, the jury finds that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the state hospital for the care and treatment of the insane, until he becomes sane; and when notice is given of that fact, as provided in section one thousand three hundred and seventy-two, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

**Legislation § 1201.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 481); in substance the same as Crim. Prac. Act, Stats. 1851, p. 262, § 457, except that, in subd. 1, it had the words "the custody of some proper and suitable person" instead of "the state lunatic asylum." 2. Amendment by Stats. 1901, p. 490; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 764, in subd. 1, (1) in first sentence, (a) omitting "to be" before "insane"; (b) in second sentence, changing "the jury find" to "the jury finds," and "the state lunatic asylum" to "the state hospital for the care and treatment of the insane."

**Citations.** Cal. 62/55; 68/180; 70/471; 114/355; 142/97; (subd. 1) 122/411; (subd. 2) 142/94.

**Punishment of person while insane:** See post, § 1367.

**Inquiry into sanity of defendant:** See post, §§ 1367 et seq.

### **New trial, defendant entitled to, if judgment not pronounced.**

§ 1202. If no sufficient cause is alleged or appears to the court at the time fixed for pronouncing judgment, as provided in section eleven hundred and ninety-one of this code, why judgment should not be pro-

nounced, it must thereupon be rendered; and if not rendered or pronounced within the time so fixed or to which it is continued under the provisions of section eleven hundred and ninety-one of this code, then the defendant shall be entitled to a new trial. If the court shall refuse to hear a defendant's motion for a new trial or when made shall neglect to determine such motion within the time fixed for pronouncing judgment, or within the time to which the same is continued under the provisions of section eleven hundred and ninety-one of this code then the defendant shall be entitled to a new trial.

**Legislation § 1202.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 482); in substance the same as Crim. Prac. Act, Stats. 1851, p. 262, § 458. When enacted in 1872, § 1202 read: "1202. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered." 2. Amended by Stats. 1909, p. 898.

**Citations.** Cal. 70/471; 138/123.

**Judgment, rendition of.** After a plea or verdict of guilty, the court must appoint a time for pronouncing judgment, as provided in § 1191, ante.

**Summary hearing. Suspension of sentence. When judgment is to pay a fine. Probation officer may rearrest. Revocation of suspension. Court may modify order. Change of plea.**

§ 1203. After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestions of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. At such specified time, if it shall appear by the record furnished by the probation officer, or otherwise, and from the circumstances, of any person over the age of sixteen years so having plead guilty or having been convicted of the crime, that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court shall have power, in its discretion, to place the defendant upon probation in the manner following:

1. The court, judge or justice thereof, may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine,

and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension.

2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid, the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon the payment of the fine being made, judgment shall be satisfied and the probation cease.

3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court, or the court may, in his discretion, issue a warrant for the rearrest of any such person and may thereupon revoke and terminate such probation, if the interest of justice so requires, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise that the person so placed upon probation is violating the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the person shall be delivered over to the proper officer to serve his sentence.

4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases,

if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged.

5. Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time prior to the expiration of the maximum period of punishment for the offense of which he has been convicted, dating from said discharge from probation or said termination of said period of probation, be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty and the court shall thereupon dismiss the accusation or information against such defendant who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted.

**Legislation § 1203.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 483), and then read: "1203. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct." 2. Amended by Stats. 1903, p. 34, to read: "1203. After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestions of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. At such specified time, if it shall appear by the record furnished by the probation officer, or otherwise, and from the circumstances, of any person over the age of sixteen years so having plead guilty or having been convicted of the crime, that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court shall have power, in its discretion, to place the defendant upon probation in the manner following: 1. The court, judge or justice thereof, may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension. 2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid,



the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon the payment of the fine being made, judgment shall be satisfied and the probation cease. 3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court, or the court may, in his discretion, issue a warrant for the rearrest of any such person and may thereupon revoke and terminate such probation, if the interest of justice so requires, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the person shall be delivered over to the proper officer to serve his sentence. 4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged." 3. Amended by Stats. 1905, p. 162, to read: "1203. After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestion of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. In such cases and after the case of the defendant has been investigated by the probation officer and a written report filed of record in the court in accordance with this statute, and in accordance with section one hundred and thirty-one of the Code of Civil Procedure, the court shall have power in its discretion to place the defendant upon probation in the manner following, if it shall appear to the judge, by such report so furnished by the probation officer or otherwise, as to any such defendant over the age of sixteen years so having pleaded guilty or having

been convicted of crime, that there are circumstances in mitigation of the punishment or that the ends of justice and the interest of society and the reform of the defendant will be subserved thereby, viz.: 1. The court, judge or justice thereof may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension, or under the charge and supervision of the probation officer of the court of another county, where the court shall deem it best because of the residence or place of occupation or employment of the person so released on probation, or because the ends of justice or reform of such person will be best subserved thereby. 2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid, the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms, as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon payment of the fine being made, judgment shall be satisfied and the probation cease. 3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court. If in the opinion of the officer it is for the interest of justice and of society and the reform of such person that his probation be revoked and that he be committed to prison, such officer shall file his written recommendation thereof of record in the court; or the court may of its own motion in its discretion, issue a warrant for the rearrest of any such person and may thereupon or upon such written recommendation of such probation officer, revoke and terminate such probation, if the interest of justice and of society, or the reform of the person will be subserved thereby, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in any criminal or immoral practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall have full force and effect, and the person shall be delivered over to the proper officer to serve his sentence, and the time during which the execution of such judgment was suspended shall not count as any part of any term of imprisonment provided for, by, or resulting under such judgment. 4. The

court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged." 4. Amended by Stats. 1909, p. 857.

Citations. Cal. 122/631. App. (subd. 1) 7/29.

Probationary treatment: See post, §§ 1215, 1388.

#### **Proof of former conviction or of facts, etc., in mitigation, etc., how made.**

§ 1204. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section.

Legislation § 1204. Enacted February 14, 1872.

#### **Imprisonment for fine.**

§ 1205. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied. But the judgment must specify the extent of the imprisonment, which must not exceed one day for every two dollars of the fine, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted.

Legislation § 1205. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 484); in substance the same as Crim. Prac. Act, § 460, as amended by Stats. 1857, p. 164, § 1, which had the words "or in that proportion" at end of section. When enacted in 1872, § 1205 read: "1205. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine." 2. Amended by Code Amdts. 1873-74, p. 455, to read: "1205. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying

the extent of imprisonment, which must not exceed one day for every dollar of the fine." 3. Amended by Stats. 1891, p. 52.

Citations. Cal. 54/205, 206; 60/435; 63/800, 801; 64/438; 66/186; 78/495, 496; 82/274, 522; 83/889, 890, 891; 84/166, 167; 85/38; 88/580, 627; 94/383, 384; 97/528; 118/37; 148/238. App. 3/194, 197; 5/104; 6/788; 8/869. Crim. Prac. Act: Cal. (§ 460) 7/209; 28/414.

Fine, imprisonment until paid: See post, §§ 1446, 1456.

### Judgment to pay fine constitutes a lien.

§ 1206. A judgment that a defendant pay a fine with or without the alternative of imprisonment constitutes a lien in like manner as a judgment for money rendered in a civil action.

Legislation § 1206. 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 263, § 461. When enacted in 1872, § 1206 read: "1206. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action." 2. Amendment by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 764; the code commissioner saying, "The amendment makes the section applicable whether the fine was imposed with or without the alternative of imprisonment. (See *People v. Brown*, 118 Cal. 85.)"

Citations. Cal. 118/37; 129/548. App. 3/197. Crim. Prac. Act: Cal. (§ 461) 28/415.

Disposition of fines and forfeitures: See post, § 1570. Compare with post, § 1214.

### Entry of judgment.

§ 1207. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any, and must, within five days, annex together and file the following papers, which constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer;
2. A copy of the minutes of the trial;
3. The written instructions given, modified, or refused, with the indorsements thereon, and the certified transcript of the charge of the court; and,
4. A copy of the judgment.

Legislation § 1207. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 485); in substance the same as Crim. Prac. Act, Stats. 1851, p. 263, § 462, but which did not contain subd. 3 of the original code section. When

enacted in 1872, § 1207 read: "1207. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction (if one), and must within five days annex together and file the following papers, which constitute a record of the action: 1. A copy of the minutes of a challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon; 2. The indictment and a copy of the minutes of the plea or demurrer; 3. A copy of the minutes of a challenge interposed to the panel of the trial jury or to an individual juror, and the proceedings and decision thereon; 4. A copy of the minutes of the trial; 5. A copy of the minutes of the judgment; 6. The bill of exceptions, if there be one; 7. The written charges asked of the court, and refused, if there be any; 8. A copy of all charges given and of the indorsements thereon." 2. Amended by Code Amdts. 1873-74, p. 449, to read: "1207. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction (if one), and must, within five days, annex together and file the following papers, which will constitute a record of the action: First—The indictment and a copy of the minutes of the plea or demurrer. Second—A copy of the minutes of the trial. Third—The charges given or refused and the indorsements thereon; and Fourth—A copy of the judgment." 3. Amended by Code Amdts. 1880, p. 26, in subd. 1, adding "or information" after "The indictment." 4. Amendment by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 764; the code commissioner saying, "The design of the amendment is to conform the section to the amendment to § 1176. To effect this the words 'and the certified transcript of the charge of the court' are inserted after 'thereon.'"

Citations. - Cal. 52/480; 57/565; 58/252; 59/651; 65/234, 298; 71/387; 73/442; 77/180; 78/2; 88/120, 140, 175, 487; 103/510; 114/354; 118/329; 120/273; 121/494; 127/547; 133/123; 145/10. App. 1/50; 6/268; 8/637. Crim. Prac. Act. Cal. (§ 462) 28/252; 31/499, 626; 37/275, 276; 43/457; 44/599.

## CHAPTER II.

## The Execution.

- § 1213. Authority for the execution of a judgment, other than of death.  
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 § 1229. Execution, where to take place and who to be present.  
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## Authority for the execution of a judgment, other than of death.

§ 1213. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

Legislation § 1213. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 486); based on Crim. Prac. Act, Stats. 1851, p. 263, § 463, which read: "§ 463. Where a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officers whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof except where judgment of death is rendered."

Citations. Cal. 108/413; 135/342. App. 8/371. Crim. Prac. Act: Cal. (§ 463) 28/258; 81/499, 622; 43/457; 103/413.

## If for fine alone, execution to issue as in civil cases.

§ 1214. If the judgment is for a fine with or without imprisonment, execution may be issued thereon as on a judgment in a civil action.

Legislation § 1214. 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 263, § 464. When enacted in 1872, § 1214

read: "1214. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action." 2. Amended by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 698; the code commissioner saying, "The amendment makes the rule of the section applicable, though the punishment include imprisonment as well as fine. (See *People v. Brown*, 113 Cal. 85.)"

Citations. Cal. 64/156, 438; 83/390, 391; 113/37; 129/548. App. 3/197.  
Judgment to pay fine constitutes *lex*: Ante, § 1206.

#### Judgment, by whom and how executed

§ 1215. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in section twelve hundred and three of the Penal Code, the defendant, if over the age of sixteen years, must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated as provided in section twelve hundred and three of the Penal Code, and the suspension of the sentence, or of the execution revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and be detained until the judgment be complied with.

Legislation § 1215. 1. Enacted February 14, 1872 (*N. Y. Code Crim. Proc.*, § 488); in substance the same as *Crim. Prac. Act*, Stats. 1851, p. 263, § 465. When enacted in 1872, the section contained only the first sentence of the present section. 2. Amended by Stats. 1903, p. 85, adding the last two sentences.

Citations. Cal. 63/300; 64/438; 83/390; 94/390. App. 3/194, 197.  
*Crim. Prac. Act*: Cal. (§ 465) 31/627.

Payment of fine: See ante, § 1205.

Probationary treatment: See ante, § 1203; post, § 1388.

Judgment of imprisonment, how executed: See post, §§ 1216, 1455.

#### Duty of sheriff on receiving copy of judgment of imprisonment.

§ 1216. If the judgment is for imprisonment in the state prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the state prison,

He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

Legislation § 1217. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 489); based on Stats. 1856, p. 226, § 2, which read: "Sec. 2. It shall be the duty of the sheriff, immediately upon the receipt of the clerk's certificate, to proceed and deliver at the state prison, each person sentenced to imprisonment therein; and for each convict delivered, he shall take the receipt of the person in charge of the prison." 2. Amendment by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante.

Citations. Cal. 185/340, 342; 186/21. App. 8/371.

Execution: Ante, § 1218.

Judgment of imprisonment, how executed: See ante, § 1215; post, § 1455.

#### Warrant of execution upon judgment of death. Time of execution.

§ 1217. When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment, and must direct the sheriff to deliver the defendant, within ten days from the time of judgment, to the warden of one of the state prisons of this state, for execution, such prison to be designated in the warrant.

Legislation § 1217. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 491, 492); in substance the same as Crim. Prac. Act, Stats. 1851, p. 263, § 466. When enacted in 1872, the first sentence read the same as the amendment of 1891 (the present section), the second sentence reading, "It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment." 2. Amended by Stats. 1891, p. 272. 3. Amendment by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante.

Citations. Cal. 54/92; 68/180, 181; 93/439; 95/429; 119/208; 141/554.

Execution of judgment of death: See post, §§ 1228, 1229.

#### Judge to transmit statement of conviction and testimony to governor.

§ 1218. The judge of the court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Legislation § 1218. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 493); in substance the same as Crim. Prac. Act, Stats. 1851, p. 263, § 467.

Citations. Cal. 68/180, 182.



Governor may require opinion of justices of supreme court, etc., thereon.

§ 1219. The governor may thereupon require the opinion of the justices of the supreme court and of the attorney-general, or any of them, upon the statement so furnished.

Legislation § 1219. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 494); in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, § 468.

**Judgment of death, when suspended.**

§ 1220. No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the warden of the state prison to whom he is delivered for execution, as provided in the six succeeding sections, unless an appeal is taken.

Legislation § 1220. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 495); in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, § 469. 2. Amended by Stats. 1891, p. 273, substituting "warden of the state prison to whom he is delivered for execution" for "sheriff." 3. Amendment by Stats. 1901, p. 491; unconstitutional: See note, § 5, ante.

**Insanity of defendant, how determined.**

§ 1221. If, after his delivery to the warden for execution, there is good reason to believe that a defendant, under judgment of death, has become insane, the warden must call such fact to the attention of the district attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment, and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and impaneled, from the regular jury-list of the county, a jury of twelve persons to hear such inquiry.

Legislation § 1221. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 496); based on Crim. Prac. Act, Stats. 1851, p. 264, § 470, which read: "§ 470. If after judgment of death there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the district attorney of the county." When enacted in 1872, § 1221 read: "1221. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected by

the supervisors for the year a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney of the county." 2. Amended by Stats. 1891, p. 278, to read: "1221. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the warden of the state prison to whom he is delivered for execution, with the concurrence of the judge of the superior court of the county in which such prison is situated, may summon from the list of jurors selected by the supervisors for the year, a jury of twelve persons, to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney of such county." 3. Amendment by Stats. 1901, p. 492; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 698; the code commissioner saying, "The amendment is designed to permit the warden to act without procuring the concurrence of the judge of the superior court, and requires the district attorney to act upon the suggestion of the warden by filing a petition and taking proceedings thereunder to ascertain whether the defendant is insane."

#### **Duty of district attorney upon hearing.**

§ 1222. The district attorney must attend the hearing, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Legislation § 1222. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 497); in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, § 471. 2. Amendment by Stats. 1901, p. 492; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 699, changing "attend the inquisition" to "attend the hearing."

#### **Order of court committing insane person to hospital.**

§ 1223. The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane, the order must direct that he be taken to one of the state hospitals for the insane, and there kept in safe confinement until his reason is restored.

Legislation § 1223. 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, § 472. When enacted in 1872, § 1223 read: "1223. A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had." 2. Amended by Stats. 1891, p. 278, to read: "1223. A certificate of inquisition must be signed by the jurors and the warden, and filed

with the clerk of the superior court of the county in which such state prison is situated." 3. Amendment by Stats. 1901, p. 492; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 699; the code commissioner saying, "The amendment requires the verdict to be entered upon the minutes, and the court thereupon to enter an order for the confinement of the defendant in a hospital if he is found to be insane."

**Defendant found to be sane, duty of warden.**

§ 1224. If it is found that the defendant is sane, the warden must proceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the warden must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor, and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the hospital named in such order. When the defendant recovers his reason, the superintendent of such hospital must certify that fact to the governor, who must thereupon issue to the warden his warrant, appointing a day for the execution of the judgment.

**Legislation § 1224.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, §§ 478, 474. When enacted in 1872, § 1224 read: "1224. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor or from the judge of the court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment." 2. Amended by Stats. 1891, p. 278, to read: "1224. If it is found by the inquisition that the defendant is sane, the warden must execute the judgment; but if it is found that he is insane, the warden must suspend the execution of the judgment until he receives a warrant from the governor, or from the judge of the superior court of the county in which such state prison is situated, directing the execution of the judgment. If the inquisition finds that the defendant is insane, the warden must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment." 3. Amendment by Stats. 1901, p. 492; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 699; the code commissioner saying, "The amendment provides for the action to be taken when the defendant recovers his reason, and consists in striking out all of the words following 'execution,' and substituting new provisions in lieu thereof."

**Citations.** Cal. 141/554.

**Proceedings when female is supposed to be pregnant.**

§ 1225. If there is good reason to believe that a female against whom a judgment of death is rendered is pregnant, such proceedings must be had as are provided in section twelve hundred and twenty-one, except that instead of a jury, as therein provided, the court may summon three disinterested physicians, of good standing in their profession, to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors, if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section twelve hundred and twenty-two apply to the proceedings upon such inquiry.

**Legislation § 1225.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 500); in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, § 475. When enacted in 1872, § 1225 read: "1225. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county, and the provisions of sections 1222 and 1228 apply to the proceedings upon the inquisition." 2. Amended by Stats. 1891, p. 278, (1) changing the first sentence to read, "If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the warden of the state prison to whom she is delivered for execution, with the concurrence of the superior court of the county in which such state prison is situated, may summon a jury of three physicians to inquire into the supposed pregnancy"; (2) in second sentence, changing "the county" to "such county." 3. Amendment by Stats. 1901, p. 493; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 699; the code commissioner saying, "The amendment conforms the section to the proposed change in § 1221."

**If female is not pregnant, duty of warden.**

§ 1226. If it is found that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant the warden must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the warden a certificate that the defendant is no longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment.

**Legislation § 1226.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 501, 502); in substance the same as Crim. Prac. Act, Stats. 1851, p. 264, §§ 476, 477. When enacted in 1872, § 1226 read: "1226. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment; if it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment." 2. Amended by Stats. 1891, p. 274, in first sentence, changing "sheriff" to "warden" in both instances. 3. Amendment by Stats. 1901, p. 493; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 699; the code commissioner saying, "The change consists in the insertion of the words 'certified copy of the finding and certificate,' and in the addition of the provision relative to the governor's issuing his warrant upon receiving a certificate from the warden."

Citations. Cal. 141/554.

**Judgment of death remaining in force, not executed. No appeal from order of court.**

**§ 1227.** If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden of the state prison to whom the sheriff is directed to deliver the defendant execute the judgment at a specified time. The warden must execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided, there is no appeal.

**Legislation § 1227.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 503); in substance the same as Crim. Prac. Act, Stats. 1851, p. 265, §§ 478, 479. When enacted in 1872, § 1227 read: "1227. If for any reason a judgment of death has not been executed and it remains in force, the court in which the conviction was had, on the application of the district attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly." 2. Amended by Stats. 1891, p. 274, to

read: "1227. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the warden of the state prison to whom the sheriff is directed to deliver the defendant, shall execute the judgment at a specified time. The warden must execute the judgment accordingly." 3. Amendment by Stats. 1901, p. 498; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 700; the code commissioner saying, "The change consists in the addition of the last sentence, which provides that no appeal can be taken from the order fixing the time for the execution of the judgment."

Citations. Cal. 54/98; 61/589, 540; 68/180; 98/489; 119/207, 208; 120/627, 628; 141/554; 154/748. Crim. Prac. Act: Cal. (§ 478) 89/104; (§ 479); 89/104.

#### **Punishment of death, how inflicted.**

§ 1228. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Legislation § 1228. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 500); in substance the same as Crim. Prac. Act, Stats. 1851, p. 265, § 480.

Citations. Cal. 59/857.

Warrant of execution: Ante, § 1217.

Execution of judgment of death: See ante, § 1217; post, § 1229.

#### **Execution, where to take place and who to be present.**

§ 1229. A judgment of death must be executed within the walls of one of the state prisons designated by the court by which judgment is rendered. The warden of the state prison where the execution is to take place must be present at the execution and must invite the presence of a physician, the attorney-general of the state, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace-officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same,

**Legislation § 1229.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 506, 507); in substance the same as Stats. 1858, p. 192, § 1. When § 1229 was enacted in 1872, the first part of the section read, "A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the district attorney of the county, and at least twelve reputable citizens, to be selected by him," thereafter the section proceeding as the amendment of 1891 (the present section). 2. Amended by Stats. 1891, p. 274. 3. Amendment by Stats. 1901, p. 493; unconstitutional: See note, § 5, ante.

**Citations.** Cal. 59/355, 357; 93/489; 95/429.

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**Execution of judgment of death:** See ante, §§ 1217, 1223.

### **Return upon death-warrant.**

§ 1230. After the execution, the warden must make a return upon the death-warrant to the court by which the judgment was rendered, showing the time, mode, and manner in which it was executed.

**Legislation § 1230.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 508); based on Stats. 1858, p. 193, § 2, which read: "Sec. 2. After the execution, the sheriff shall make a return upon the death-warrant, setting forth particularly that said warrant has been executed according to law." When enacted in 1872, § 1230 read: "1230. After the execution, the sheriff must make a return upon the death-warrant, showing the time, mode, and manner in which it was executed." 2. Amended by Stats. 1891, p. 274.

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## TITLE IX.

## Appeals to the Supreme Court.

- Chapter I. Appeals, when Allowed and how Taken, and the Effect Thereof. §§ 1235-1247e.
- II. Dismissing an Appeal for Irregularity. §§ 1248, 1249.
- III. Argument of the Appeal. §§ 1252-1255.
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## CHAPTER I.

## Appeals, when Allowed and how Taken, and the Effect Thereof.

- § 1235. Appeals, by whom taken on questions of law.
- § 1236. Parties, how designated on appeal.
- § 1237. In what cases an appeal may be taken by the defendant.
- § 1238. In what cases by the people.
- § 1239. Appeal, how taken by defendant.
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- § 1246. Papers to be transmitted to appellate court. Copy to defendant and district attorney.
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- § 1247a. Duty of clerk to deliver copies to parties. Proposed corrections.
- § 1247b. When appellant shall transcribe.
- § 1247c. Further transcription.
- § 1247d. Time cannot be extended by trial court.
- § 1247e. Printing in criminal cases.

## Appeals, by whom taken on questions of law.

§ 1235. Either party in a prosecution by indictment or information may appeal to the supreme court on questions of law alone, as prescribed in this chapter.

Legislation § 1235. 1. Enacted February 14, 1872; based on Crim. Prac. Act, § 481, as amended by Stats. 1863, p. 161, § 19, and § 482, as amended by Stats. 1858, p. 218, § 2, which read: "Section 481. The party aggrieved



in a criminal action, whether that party be the people or the defendant, may appeal as follows: First—To the county court, from a final judgment of a justice's, recorder's, or other inferior municipal court. Second—To the supreme court, from a final judgment of the district court, or county court, in all criminal cases amounting to a felony, on questions of law alone; also, from an order of the district court, or county court, granting or refusing a new trial, or which affects a substantial right in a criminal case amounting to felony, on questions of law alone." "Section 482. The appeal to the supreme court can be taken on questions of law alone. The appeal to the county court can be taken on both questions of law and fact." When enacted in 1872, § 1235 read: "1235. Either party in a criminal action amounting to a felony may appeal to the supreme court, on questions of law alone, as prescribed in this chapter." 2. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 700; the code commissioner saying, "The amendment is designed to make the section conform to art. vi, § 4, of the constitution, which provides that the supreme court has jurisdiction 'in all criminal cases prosecuted by indictment or information in a court of record, on questions of law alone,' it having been held (in *People v. Jordan*, 65 Cal. 644) that it has jurisdiction in all such cases, and that if its jurisdiction by appeal is restricted to cases of felony, it would devolve upon it to establish some appropriate system of appellate procedure by which it could review all other convictions based upon an indictment or information."

Citations. Cal. 65/645; 108/668; 109/279. Crim. Prac. Act: Cal. (§ 481) 9/86; 31/565; 34/808; 39/609; 42/624; 44/385.

Constitutional provision. As to appellate jurisdiction, see Const. 1879, art. vi, § 4.

#### Parties, how designated on appeal.

§ 1236. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

Legislation § 1236. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 516); in substance the same as Crim. Prac. Act, Stats. 1851, p. 265, § 433.

#### In what cases an appeal may be taken by the defendant.

§ 1237. An appeal may be taken by the defendant:

1. From a final judgment of conviction;
2. From an order denying a motion for a new trial;
3. From any order made after judgment, affecting the substantial rights of the party.

Legislation § 1237. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 517); based on Crim. Prac. Act, § 481, q.v., ante, Legislation § 1236.

Citations. Cal. 54/92; 65/100, 101; 77/309; 82/615; 115/161; 117/666; 119/2; 132/15; 138/33; 151/668; (subd. 1) 119/57; (subd. 3) 95/595; 119/209; 136/20. App. 8/602; (subd. 3) 4/726.

Defendant cannot appeal from order carrying unexecuted death sentence into effect: See ante, § 1227.

### In what cases by the people.

§ 1238. An appeal may be taken by the people:

1. From an order setting aside the indictment or information;
2. From a judgment for the defendant on a demurrer to the indictment, accusation or information;
3. From an order granting a new trial;
4. From an order arresting judgment;
5. From an order made after judgment, affecting the substantial rights of the people.

Legislation § 1238. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 518); based on Crim. Prac. Act, § 481, q.v., ante, Legislation § 1236. When enacted in 1872, § 1238 read: "1238. An appeal may be taken by the people: 1. From a judgment for the defendant on a demurrer to the indictment; 2. From an order granting a new trial; 3. From an order arresting judgment; 4. From any order made after judgment, affecting the substantial rights of the people." 2. Amended by Code Amtds. 1880, p. 23, (1) in subd. 1, adding "or information" at end of subdivision; (2) adding subd. 5, which read, "5. From an order of the court directing the jury to find for the defendant." 3. Amended by Stats. 1897, p. 195, to read: "1238. An appeal may be taken by the people: 1. From an order setting aside the indictment or information; 2. From a judgment for the defendant on a demurrer to the indictment or information; 3. From an order granting a new trial; 4. From an order arresting judgment; 5. From an order made after judgment, affecting the substantial rights of the people; 6. From an order of the court directing the jury to find for the defendant." 4. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 700; the code commissioner saying, "The change consists in the omission of subd. 6, because the court cannot make the order therein referred to, its action being limited to advising the jury to acquit; and if this advice is followed, an appeal is necessarily unavailing, because a defendant after his acquittal cannot be placed upon trial. (See *People v. Stoll*, 143 Cal. 639.)"

Citations. Cal. 65/79, 644; 70/18; 71/546; 107/478; 118/474; 114/68, 69; (subd. 5) 114/84. App. 8/602; (subd. 5) 3/168.

### Appeal, how taken by defendant.

§ 1239. An appeal from a judgment may be taken by the defendant by announcing personally or through his attorney in open court

at the time the judgment is rendered that he appeals from the same; and from any order made after judgment, by announcing in open court at the time the same is made that he appeals from the same.

**Legislation § 1239.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 521); based on Crim. Prac. Act, Stats. 1851, p. 266, § 485, which read: "§ 485. An appeal must be taken within one year after the judgment was rendered." When enacted in 1872, § 1239 read: "1239. An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made." 2. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1907, p. 559, to read: "1239. An appeal from a judgment must be taken within ninety days after its rendition and from an order within sixty days after it is made." 4. Amended by Stats. 1909, p. 1086.

**Citations.** Cal. 53/680; 95/595; 105/263; 132/139; 136/21. App. 7/343, 344, 345.

#### Appeal by the people.

§ 1240. An appeal may be taken by the people by announcing in open court at the time the order is made that the people appeal from the same.

**Legislation § 1240.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 522-525); based on Crim. Prac. Act, Stats. 1851, p. 266, §§ 486, 487, 488, which read: "§ 486. An appeal must be taken by the service of a notice in writing on the clerk of the court in which the action was tried, stating that appellant appeals from the judgment. § 487. If the appeal be taken by the defendant, a similar notice must be served on the district attorney of the county in which the judgment was rendered. § 488. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the county; or if not, on the counsel, if any, who appeared for him on trial, if he be living within the county. If such service, after due diligence, cannot be made, the appellate court, upon proof thereof, shall make an order for the publication of due notice in some newspaper, and for such time as it may deem proper." When enacted in 1872, § 1240 read: "1240. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party." 2. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 701, to read: "1240. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party." 4. Amended by Stats. 1909, p. 1086.

**Citations.** Cal. 49/455; 56/120; 62/482; 66/11; 70/34; 77/309; 119/669; 148/744. App. 7/343, 344, 345; 8/467. Crim. Prac. Act: Cal. (§ 188) 34/308.

Clerk must enter notice of appeal.

§ 1241. Any announcement of appeal made in open court by either the defendant or the people, must be by the clerk immediately entered in the minutes of the court. But the failure of the clerk to so enter the same in the minutes shall in no way affect or invalidate the appeal.

**Legislation § 1241.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 524); based on Crim. Prac. Act, Stats. 1851, p. 266, §§ 488, 489 (see § 488, quoted supra, Legislation § 1240), § 489 reading, "§ 489. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected." When enacted in 1872, § 1241 read: "1241. If personal service of the notice cannot be made, the judge of the court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service." 2. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 701, to read: "1241. If personal service of the notice cannot be made, the judge of the court in which the action was tried, upon proof thereof, by affidavit filed therein, may make an order for the publication of the notice in some newspaper, for a period not exceeding thirty days. Such publication is equivalent to personal service." 4. Amended by Stats. 1909, p. 1086.

**Citations.** Cal. 49/455.

**Effect of an appeal by the people.**

§ 1242. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

**Legislation § 1242.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 526); in substance the same as Crim. Prac. Act, Stats. 1851, p. 266, § 490.

**Effect of an appeal by the defendant.**

§ 1243. An appeal to the supreme court from a judgment of conviction stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the supreme court, that, in his opinion, there is probable cause for the appeal, but not otherwise.

**Legislation § 1243.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 527, 528). 2. Amended by Code Amdts. 1873-74, p. 450, inserting "in all capital cases and in all other cases" after "execution of the judgment."

**Citations.** Cal. 45/305; 49/682; 68/180; 81/164, 166; 95/596; 96/596, 597; 104/401; 119/129, 210; 125/252; 135/60; 144/657; 152/603.

**Same.**

§ 1244. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

**Legislation § 1244.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 530).

**Citations.** Cal. 149/391; 151/720.

**Same.**

§ 1245. If before the granting of the certificate, the execution of the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

**Legislation § 1245.** 1. Enacted February 14, 1872. 2. Amendment by Stats. 1901, p. 494; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 701, inserting "the execution of" before "the judgment."

**Papers to be transmitted to appellate court. Copy to defendant and district attorney.**

§ 1246. Upon the appeal being taken, the clerk of the court from which the appeal is taken must, without charge, within twenty days thereafter transmit to the clerk of the appellate court a typewritten copy of the following papers:

1. The indictment, information or accusation;
2. A copy of the minutes of the plea;
3. A copy of the minutes of the demurrer;
4. A copy of the demurrer;
5. A copy of the minutes of the trial;
6. A copy of other minutes of the action, including the proceedings on motion for arrest of judgment or new trial;
7. A copy of the written charges given by the court to the jury, or refused, or modified and given; also a transcript of any oral charge;
8. A copy of the judgment;

9. Any written or printed exhibits offered in evidence at the trial of the cause.

The clerk of the court from which the appeal is taken must also, within the time above specified, deliver, without charge, to the defendant or his attorney, upon application therefor, a carbon copy of the original transmitted to the clerk of the appellate court; and must also deliver, without charge, a carbon copy to the district attorney upon his application therefor.

**Legislation § 1246.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 582); based on Crim. Prac. Act, § 492, as amended by Stats. 1862, p. 586, § 1, which read: "§ 492. Upon the appeal being taken, the clerk with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit to the clerk of the supreme court a copy of the notice of appeal, and of the record, and, upon the receipt of the record, it shall be the duty of the clerk of the supreme court to file said record, and perform the same service as in civil cases, without demanding his fees therefor; said fees, in case of a reversal of the judgment and ultimate acquittal of the defendant, to be a charge against the state, and, in case of an affirmance of the judgment appealed from, to be a charge against the defendant, and collected in the same manner as judgment in civil cases; provided, however, that in case of the insolvency of the defendant, and his inability to pay said costs, then and in that event they shall become a charge against the state." When enacted in 1872, § 1246 read: "1246. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the clerk of the appellate court a copy of the notice of appeal and of the record, and of all bills of exception, instructions, and indorsements thereon; and upon the receipt thereof the clerk of the appellate court must file the same and perform the same service as in civil cases, without charge." 2. Amended by Code Amdts. 1880, p. 9, to read: "1246. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not, then within ten days from the settlement of the bill of exceptions, without charge, transmit to the clerk of the appellate court a copy of the notice of appeal, and of the record, and of all bills of exceptions, instructions, and indorsements thereon; and, upon the receipt thereof, the clerk of the appellate court must file the same and perform the same services as in civil cases, without charge." 3. Amended by Stats. 1889, p. 325, to read: "1246. Upon the appeal being taken the clerk of the court with whom the notice of appeal is filed must, within twenty days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not then within twenty days from the settlement of the bill of exceptions, without charge, transmit to the clerk of the appellate court, fifteen printed copies (one of which shall be certified to and be the original) of the notice of appeal, the record, and of all bills of exceptions; and upon

receipt thereof the clerk of the appellate court must file the original, and dispose of the copies as he is required to do in the case of transcripts on appeal in civil cases, and all his services as provided herein must be without charge. The clerk of the lower court must also within the time above specified serve printed copies of the above-named papers without charge upon the defendant's attorney and upon the attorney-general. The printing of the above-named papers is a county charge." 4. Amended by Stats. 1909, p. 1087.

Citations. Cal. 49/649; 84/582; 115/167; 120/554. App. 6/268.

**Appeals. Reporter's notes to be transcribed. Time in which to file notes by reporter.**

§ 1247. Upon any appeal being taken from any judgment or order of the superior court to the supreme court, or a district court of appeal, in any criminal proceedings, where such appeal is allowed by law, the defendant or the district attorney when the people appeal, may within two days file with the clerk and present an application to the trial court, stating in general terms the ground of the appeal, and the points upon which the appellant relies, and designate what portion of the phonographic reporter's notes it will be necessary to have transcribed to fairly present the points relied upon, and ask the court to make an order for the transcription thereof. The court shall, within one day after the filing of such application, make an order directing the phonographic reporter who reported the case, to transcribe such portion of his notes as in the opinion of the court may be necessary to fairly and fully present the points relied upon by the appellant. Where one of the grounds stated in the application is the insufficiency of the evidence to sustain the conviction, the court shall direct all the evidence to be transcribed, unless it is stipulated that some portion of the evidence shall be omitted. If the court fails to make the order within one day after the application is presented, an order shall be deemed to be given and made for the portion of the notes requested in the application. The phonographic reporter shall, within twenty days after the making of such application, file with the clerk of the court an original transcription of the portion of his notes ordered transcribed, excluding therefrom all argument of counsel not objected to at the time the same was made, typewritten, and three carbon copies thereof. The original and each copy shall be duly certified by him under oath to be correct.

Legislation § 1247. Added by Stats. 1909, p. 1084.

**Duty of clerk to deliver copies to parties. Proposed corrections.**

§ 1247a. Upon the transcribed notes being filed by the reporter with the clerk, it shall be the duty of the clerk forthwith to immediately deliver upon demand one of the carbon copies to the defendant or his attorney, the other carbon copy upon demand to the district attorney, and deliver the original, with the date of the several deliveries of the original and the copies, if delivery has been made, indorsed upon the original, to the court for its approval. Unless objection is made thereto by either the defendant or his attorney or the district attorney, within ten days after receipt thereof, the judge shall certify thereon that no objection has been made thereto within the time allowed by law; and after so certifying shall immediately redeliver the same to the clerk. The defendant or his attorney or the district attorney may file with the clerk a proposed correction of the transcribed proceedings within ten days after the filing of the transcribed proceedings. The court must immediately hear and determine the objection; if in the opinion of the court the transcription of the proceedings is not correct, the court must correct the same. When so corrected he must certify thereon that all objections made thereto have been heard and determined, and the same corrected in accordance with such determination; and thereupon immediately redeliver the same to the clerk. When the original transcription of the proceedings so certified by the judge has been received by the clerk from the judge, he must immediately transmit the same to the court to which the appeal was taken, and thereupon it shall become a part of the record upon appeal and he must immediately transmit to the attorney-general a carbon copy thereof with any and all corrections made to the original notes thereon.

Legislation § 1247a. Added by Stats. 1909, p. 1085.

**When appellant shall transcribe.**

§ 1247b. If a transcription of the phonographic reporter's notes cannot be obtained, by reason of his illness or death, the appellant shall cause to be prepared and filed, in the place thereof, a transcription of such of the proceedings as was by the court ordered to be transcribed by the phonographic reporter. Such transcription must be filed within the time and in the manner provided for the filing of the phonographic reporter's transcribed notes. Upon such



filing by the appellant, the same proceedings shall be had and taken as is provided in section twelve hundred and forty-seven a of this code, upon the filing the phonographic reporter's transcribed notes.

Legislation § 1247b. Added by Stats. 1909, p. 1085.

#### **Further transcription.**

§ 1247c. Upon suggestion to the appellate court wherein an appeal in a criminal case is pending, that a further transcription of the proceedings is necessary, if in the opinion of the court it is necessary to have a further transcription of the proceedings in the trial court, it may order the same to be transcribed by the phonographic reporter within a time fixed in the order; provided that no further transcription shall be ordered upon the suggestion of the appellant unless the application therefor was included in the original application made to the trial court. There shall thereupon be transcribed the portion so ordered, and copies filed with the clerk of the superior court in the same manner and with like force and effect as though included in the original order of the court; and like proceedings shall be had and taken as provided by law, as in case of the original.

Legislation § 1247c. Added by Stats. 1909, p. 1085.

#### **Time cannot be extended by trial court.**

§ 1247d. The time within which the phonographic reporter shall transcribe and file his notes or the appellant shall file a transcription of the proceedings as provided in section twelve hundred and forty-seven b of this code cannot be extended by the judge of the court or by the court in which the case was tried. Upon affidavit showing good cause therefor, the court in which the appeal is pending may extend the time not exceeding sixty days.

Legislation § 1247d. Added by Stats. 1909, p. 1086.

#### **Printing in criminal cases.**

§ 1247e. No printing of any record on appeal or briefs in a criminal case shall be required or ordered.

Legislation § 1247e. Added by Stats. 1909, p. 1086.

## CHAPTER II.

**Dismissing an Appeal for Irregularity.**

§ 1248. For what irregularity, and how dismissed.

§ 1249. Dismissed for want of a return.

**For what irregularity, and how dismissed.**

§ 1248. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed.

**Legislation § 1248.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 533); in substance the same as Crim. Prac. Act, Stats. 1851, p. 266, § 493. 2. Amended by Code Amdts. 1880, p. 10, omitting "in term" after "on any day."

**Citations.** Cal. 69/288; 95/595; 182/139.

**Dismissed for want of a return.**

§ 1249. The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in section twelve hundred and forty-six, unless for good cause they enlarge the time for that purpose.

**Legislation § 1249.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 534); in substance the same as Crim. Prac. Act, Stats. 1851, p. 266, § 494.

## CHAPTER III.

**Argument of the Appeal.**

§ 1252. Appeals, when to be heard and determined.

§ 1253. Judgment may be affirmed, but cannot be reversed without argument.

§ 1254. Number of counsel to be heard.

§ 1255. Defendant need not be present.

**Appeals, when to be heard and determined.**

§ 1252. All appeals in criminal cases must be heard and determined by the appellate court within sixty days after the record is filed in said appellate court, unless continued on motion or with the consent of the defendant.

**Legislation § 1252.** 1. Enacted February 14, 1872 (in substance the same as Crim. Prac. Act, Stats. 1851, p. 266, § 495, and then read: "1252. All

appeals in criminal cases must be heard and determined at the first term of the appellate court after the record is filed." 2. Amended by Code Amdts. 1880, p. 10.

Citations. Cal. 91/29; 97/249.

**Judgment may be affirmed, but cannot be reversed without argument.**

§ 1253. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

Legislation § 1253. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 267, § 496, which read: "§ 496. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear."

Citations. Cal. 55/298; 97/248; 158/368.

**Number of counsel to be heard.**

§ 1254. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

Legislation § 1254. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 540); in substance the same as Crim. Prac. Act, § 497, as amended by Stats. 1854, Kerr ed. p. 170, Redding ed. p. 81, § 5.

Citations. Cal. 55/298.

**Defendant need not be present.**

§ 1255. The defendant need not personally appear in the appellate court.

Legislation § 1255. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 541); based on Crim. Prac. Act, § 498, as amended by Stats. 1868, p. 162, § 20, which read: "§ 498. The defendant need not appear in the appellate court, except when a new trial has been granted in the county court, and his personal presence is necessary for the purpose of identification."

Citations. Cal. 55/298.

## CHAPTER IV.

## Judgment upon Appeal.

- § 1258. Court to give judgment without regard to technical errors.
- § 1259. Appellate court may review what.
- § 1260. May reverse, affirm, or modify the judgment, and order new trial.
- § 1261. New trial, where to be had.
- § 1262. Defendant, when to be discharged on reversal of judgment.
- § 1263. Judgment to be executed on affirmance.
- § 1264. Judgment upon appeal, how entered and remitted.
- § 1265. Jurisdiction of appellate court ceases after judgment remitted.

## Court to give judgment without regard to technical errors.

§ 1258. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Legislation § 1258. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 542); in substance the same as Crim. Prac. Act, Stats. 1851, p. 267, § 499. Citations. Cal. 47/120; 50/471; 53/495; 55/525; 56/407; 57/99, 100; 58/266; 59/377, 604; 62/520; 63/615; 65/149, 566; 71/387; 73/816; 88/139, 439; 90/572; 94/119, 120; 102/387; 104/484; 105/264; 106/40; 109/297; 115/60; 117/657; 120/274; 133/73, 124; 137/264, 267; 138/536; 139/116; 162; 141/534; 144/756; 145/504; 147/553., App. 5/218; 6/502; 8/558. Crim. Prac. Act: Cal. (§ 499) 44/95.

## Appellate court may review what.

§ 1259. Upon an appeal taken by the defendant in open court, the appellate court may, without exception having been taken in the trial court, review any question of law involved in any ruling, order, instruction, or thing whatsoever said or done at the trial or prior to or after judgment, which thing was said or done after objection made in and considered by the lower court, and which affected the substantial rights of the defendant. The appellate court may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby.

Legislation § 1259. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 265, § 484, which read: " § 484. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be revised." When enacted in 1872, § 1259 read: " 1259. Upon an appeal taken by the defendant from a judgment, the court

may review any intermediate order or ruling involving the merits, or which may have affected the judgment." 2. Amended by Stats. 1909, p. 1088.

Citations. Cal. 65/100, 101; 119/2; 135/372, 374; 145/788. App. 1/73, 74; 8/140, 596. Crim. Prac. Act: Cal. (§ 484) 42/624; 44/95.

Errors not affecting substantial rights, not material: See ante, § 960; post, § 1404.

#### **May reverse, affirm, or modify the judgment, and order new trial.**

§ 1260. The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial.

Legislation § 1260. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 543); based on Crim. Prac. Act, Stats. 1851, p. 267, § 500, which read: "§ 500. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial."

Citations. Cal. 94/386.

#### **New trial, where to be had.**

§ 1261. When a new trial is ordered it must be directed to be had in the court of the county from which the appeal was taken.

Legislation § 1261. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 544); in exact language of Crim. Prac. Act, Stats. 1851, p. 267, § 501.

#### **Defendant, when to be discharged on reversal of judgment.**

§ 1262. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

Legislation § 1262. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 545); in substance the same as Crim. Prac. Act, Stats. 1851, p. 267, § 502.

Citations. Cal. 61/380; 143/220; 149/114, 115, 116.

#### **Judgment to be executed on affirmance.**

§ 1263. If a judgment against the defendant is affirmed, the original judgment must be enforced.

Legislation § 1263. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 546); based on Crim. Prac. Act, Stats. 1851, p. 267, § 503, which read: "§ 503. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court may direct."

**Judgment upon appeal, how entered and remitted.**

§ 1264. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry, with a copy of the opinion of the court attached thereto, forthwith remitted to the clerk of the court from which the appeal was taken.

Legislation § 1264. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 547); in substance the same as Crim. Prac. Act, Stats. 1851, p. 267, § 504. When enacted in 1872, § 1264 read: "1264. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken." 2. Amendment by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 701; the code commissioner saying, "The design of the amendment is to require a copy of the opinion of the supreme court to be certified to and sent to the clerk of the court below with the remittitur."

Citations. Crim. Prac. Act: Cal. (§ 504) 89/104; 41/210.

**Jurisdiction of appellate court ceases after judgment remitted.**

§ 1265. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

Legislation § 1265. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 549); based on Crim. Prac. Act, Stats. 1851, p. 267, § 506, which read: "§ 506. After the certificate of judgment has been remitted, as provided in section five hundred and fourth, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted."

Citations. Crim. Prac. Act: Cal. (§ 506) 89/104; 41/211.

## TITLE X.

## Miscellaneous Proceedings.

- Chapter I. Bail. Articles I-VIII. §§ 1268-1317.
- II. Who may be Witnesses in Criminal Actions. §§ 1321-1323.
  - III. Compelling the Attendance of Witnesses. §§ 1326-1333.
  - IV. Examination of Witnesses Conditionally. §§ 1335-1346.
  - V. Examination of Witnesses on Commission. §§ 1349-1362.
  - VI. Inquiry into the Insanity of the Defendant before Trial or after Conviction. §§ 1367-1373.
  - VII. Compromising Certain Public Offenses by Leave of the Court. §§ 1377-1379.
  - VIII. Dismissal of the Action, before or after Indictment, for Want of Prosecution or Otherwise. §§ 1382-1389.
  - IX. Proceedings against Corporations. §§ 1390-1397.
  - X. Entitling Affidavits. § 1401.
  - XI. Errors and Mistakes in Pleadings and Other Proceedings. § 1404.
  - XII. Disposal of Property Stolen or Embezzled. §§ 1407-1413.
  - XIII. Reprieves, Commutations, and Pardons. §§ 1417-1423.

## CHAPTER I.

## Bail.

- Article I. In What Cases the Defendant may be Admitted to Bail. §§ 1268-1274.
- II. Bail upon being Held to Answer before Indictment. §§ 1277-1281.
  - III. Bail upon an Indictment before Conviction. §§ 1284-1289.
  - IV. Bail on Appeal. §§ 1291, 1292.
  - V. Deposit Instead of Bail. §§ 1295-1297.
  - VI. Surrender of the Defendant. §§ 1300-1302.
  - VII. Forfeiture of the Undertaking of Bail or of the Deposit of Money. §§ 1305-1307.
  - VIII. Recommitment of the Defendant, after having Given Bail or Deposited Money Instead of Bail. §§ 1310-1317.
- Pen. Code—38

## ARTICLE I.

**When Cases the Defendant may be Admitted to Bail.**

to bail defined.

to bail defined.

to bail defined.

defendant may be admitted to bail before conviction.

to bail upon appeal.

a matter of discretion, notice of application must be given

to attorney.

to bail defined.

to bail is the order of a competent court or

the defendant be discharged from actual custody

Enacted February 14, 1872 (N. Y. Code Crim. Proc.,

substance the same as Crim. Prac. Act, Stats. 1851, p. 267, § 507.

§ 54/103. App. 1/654.

See ante, § 822; post, § 1284.

to bail defined.

the taking of bail consists in the acceptance, by a com-

petent magistrate, of the undertaking of sufficient bail for

the defendant, according to the terms of the un-

derstanding that the bail will pay to the people of this state a

Enacted February 14, 1872 (N. Y. Code Crim. Proc.,

substance the same as Crim. Prac. Act, Stats. 1851, p. 268, § 508.

App. 1/654; 6/268. Crim. Prac. Act: Cal. (§ 508) 19/681.

Excessive bail shall not be required: Const., art. i, § 6;

Amdt. 8.

to bail defined.

A defendant charged with an offense punishable with

death shall not be admitted to bail, when the proof of his guilt is evi-

dently beyond a reasonable doubt. The finding of an indictment

shall add to the strength of the proof or the presumptions to be

made therefrom.

Enacted February 14, 1872 (N. Y. Code Crim. Proc.,

based on Crim. Prac. Act, § 510, as amended by Stats. 1865-66, p.

which read. "§ 510 No person shall be admitted to bail when



he is charged with an offense punishable with death where the proof is evident or the presumption great; but the finding of an indictment by a grand jury shall in no case be taken to create such a presumption as to preclude the court in its discretion admitting a defendant to bail."

Citations. Cal. 68/177; 85/365; 92/189. Crim. Prac. Act: Cal. (§ 510) 19/542.

**Constitutional provision.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great: Const., art. i, § 6.

### **In what cases defendant may be admitted to bail before conviction.**

§ 1271. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

**Legislation § 1271.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 553); based on Crim. Prac. Act, § 509, as amended by Stats. 1868, p. 151, § 1, which read: "§ 509. A person charged with an offense may be admitted to bail, before conviction, as a matter of right, in all cases except as specified in section five hundred and ten."

Citations. Cal. 54/103; 68/177, 178, 180, 182, 183; 92/189. Crim. Prac. Act: Cal. (§ 509) 19/542.

### **Admission to bail upon appeal.**

§ 1272. *When admitted to bail after conviction and upon appeal.* After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only.
2. As a matter of right, when the appeal is from a judgment imposing imprisonment in cases of misdemeanor.
3. As a matter of discretion in all other cases.

**Legislation § 1272.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 555); based on Crim. Prac. Act, Stats. 1851, p. 268, § 512. When § 1272 was enacted in 1872, it did not contain the present subd. 2, the present subd. 3 being then numbered 2. 2. Amended by Stats. 1909, p. 591.

Citations. Cal. 48/552; 49/681; 62/491; 68/177, 178, 180, 182, 183; 89/80, 81; 112/629. Crim. Prac. Act: Cal. (§ 512) 41/30.

**Bail after conviction:** See post, § 1273.

**Giving notice to district attorney when bail discretionary:** See post, § 1274.

### **Nature of bail.**

§ 1273. If the offense is bailable, the defendant may be admitted to bail before conviction:

First. For his appearance before the magistrate, on the examination of the charge, before being held to answer.

Second. To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.

Third. After indictment, either before the bench-warrant is issued for his arrest, or upon any order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal:

First. If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

Second. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

**Legislation § 1273.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 556); based on Crim. Prac. Act, Stats. 1851, p. 268, §§ 513, 514, which read: "§ 513. Before conviction a defendant may be admitted to bail: First, for his appearance before the magistrate, on the examination of the charge before being held to answer. Second, to appear at the court to which the magistrate is required, by section one hundred and seventy-six, to return the depositions and statement upon the defendant being held to answer after examination. Third, after indictment, either before the bench-warrant issued for his arrest, or upon any order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial. § 514. After conviction and upon an appeal the defendant may be admitted to bail as follows: First, if the appeal be from a judgment imposing a fine only on the recognisance of bail that he will pay the same or such part of it as the appellate court may direct, if the judgment be affirmed or modified or the appeal be dismissed. Second, if judgment of imprisonment have been given that he will surrender himself in execution of the judgment, upon its being confirmed or modified, or upon the appeal being dismissed." 2. Amended by Code Amdts. 1875-76, p. 116, in

the second subd. 2, adding the final clause of the subdivision, beginning "or that in case the judgment be reversed."

Citations. Cal. 54/108. App. 1/654; 6/579; (subd. 2) 6/580. Crim. Prac. Act: Cal. (§ 514) 20/529.

Bail after conviction: See ante, § 1272.

Bail, when discretionary: See ante, § 1272.

**When bail is matter of discretion, notice of application must be given to district attorney.**

§ 1274. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney of the county.

Legislation § 1274. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 268, § 511, which read: "§ 511. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county where the examination is had."

#### ARTICLE II.

##### Bail upon being Held to Answer before Indictment.

§ 1277. What magistrates may admit to bail.

§ 1278. Bail, how put in and form of the undertaking.

§ 1279. Qualifications of bail.

§ 1280. Bail, how to justify.

§ 1281. On allowance of bail, defendant to be discharged.

##### What magistrates may admit to bail.

§ 1277. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

Legislation § 1277. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 557, 558); in substance the same as Crim. Prac. Act, Stats. 1851, p. 268, § 515.

Citations. App. 1/654.

What magistrates have power to admit to: See post, § 1291.

##### Bail, how put in and form of the undertaking.

§ 1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion

of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the — day of —, A. D. eighteen [nineteen] —, by A. B., a justice of the peace of — county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of — dollars; we, E. F. and G. H. (stating their place of residence and occupation), hereby undertake that the above-named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of — dollars (inserting the sum in which the defendant is admitted to bail.)

**Legislation § 1278.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 568); in substance the same as Crim. Prac. Act, Stats. 1851, p. 269, § 516, which (1) did not have the words "or residence" after "place of residence," but (2) had "he will pay to the people" instead of "we will pay," etc.

**Citations.** Cal. 54/410. App. 8/470. Crim. Prac. Act: Cal. (§ 516) 19/661, 662; 35/109.

**Form of undertaking:** See post, § 1287.

**Form of undertaking on admission to bail after recommitment:** See post, § 1316.

### **Qualifications of bail.**

§ 1279. The qualifications of bail are as follows:

1. Each of them must be a resident, householder, or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered;

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Legislation § 1279. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 569); in substance the same as Crim. Prac. Act, § 517, as amended by Stats. 1855, p. 269, § 2.

Citations. Cal. 65/583. App. 8/470.

Qualifications of bail: See post, § 1280.

#### **Bail, how to justify.**

§ 1280. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

Legislation § 1280. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 570); based on Crim. Prac. Act, Stats. 1851, p. 269, §§ 518, 519, which read: "§ 518. The bail shall in all cases justify by affidavit taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section 517. § 519. The court or magistrate may thereupon further examine the bail upon oath concerning their sufficiency in such manner as the court or magistrate may deem proper."

Citations. Cal. 65/583.

Justification of bail: See ante, § 1279.

#### **On allowance of bail, defendant to be discharged.**

§ 1281. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

Legislation § 1281. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 576).

Citations. Cal. 51/470; 54/411; 65/583.

Discharge of defendant on allowance of bail and filing of undertaking: See ante, § 823; post, § 1283.

## ARTICLE III.

**Bail upon an Indictment before Conviction.**

- § 1284. When offense is not capital.
- § 1285. When offense is capital.
- § 1286. Bail on habeas corpus.
- § 1287. Form of undertaking.
- § 1288. Sections applicable to bail.
- § 1289. Increase or reduction of bail.

**When offense is not capital.**

§ 1284. When the offense charged is not punishable with death, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

**Legislation § 1284.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 578); in substance the same as Crim. Prac. Act, Stats. 1851, p. 269, § 520. 2. Amended by Code Amdts. 1880, p. 26, omitting "in the indictment," after "When the offense charged."

**Citations.** Cal. 65/582.

**When offense is capital.**

§ 1285. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant.

**Legislation § 1285.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 579); in substance the same as Crim. Prac. Act, Stats. 1851, p. 269, § 521. 2. Amended by Code Amdts. 1880, p. 26, omitting "in the indictment," after "If the offense charged."

**Citations.** Cal. 59/417.

**Bail on habeas corpus.**

§ 1286. When the defendant is so delivered into custody he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

**Legislation § 1286.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 580); in substance the same as Crim. Prac. Act, Stats. 1851, p. 269, § 522. **Citations.** Cal. 59/417.

**Offense not ballable:** See ante, § 1270.

**Bail on habeas corpus:** See post, §§ 1489, 1491.

**Form of undertaking.**

§ 1287. The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the — day of —, A. D. eighteen [nineteen] —, in the county [superior] court of the county of —, charging A. B. with the crime of — (designating it generally), and he having been admitted to bail in the sum of — dollars, we, C. D. and E. F., of — (stating their place of residence and occupation), hereby undertake that the above-named A. B. will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of — dollars (inserting the sum in which the defendant is admitted to bail.)

**Legislation § 1287.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 581); in substance the same as Crim. Prac. Act, § 523, as amended by Stats. 1863, p. 162, § 21, which did not have the words "and occupation" after "place of residence."

**Citations.** Cal. 63/409.

**Action on forfeiture:** Post, § 1806.

**Form of undertaking:** See ante, § 1278.

**Form of undertaking on admission to bail after recommitment:** See post, § 1816.

**Sections applicable to bail.**

§ 1288. The provisions contained in sections twelve hundred and seventy-nine, twelve hundred and eighty, and twelve hundred and eighty-one, in relation to bail before indictment, apply to bail after indictment.

**Legislation § 1288.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 582); in substance the same as Crim. Prac. Act, Stats. 1851, p. 270, § 524. When enacted in 1872, § 1288 read: "1288. The provisions contained in sections 1279, 1280, and 1281, in relation to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in

and justifying of bail and incident thereto." 2. Amended by Code Amdts. 1873-74, p. 450.

Discharge of allowance of bail: See ante, §§ 823, 1281.

Increase of bail: See ante, §§ 985, 986.

#### **Increase or reduction of bail.**

§ 1289. After a defendant has been admitted to bail upon an indictment or information, the court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the district attorney.

Legislation § 1289. 1. Added by Code Amdts. 1873-74, p. 450, the first sentence then reading, "After a defendant has been admitted to bail upon an indictment, the court in which the indictment is pending may, upon good cause shown, either increase or reduce the amount of bail," the remainder of the section reading as at present. 2. Amended by Code Amdts. 1880, p. 27.

### **ARTICLE IV.**

#### **Bail on Appeal.**

§ 1291. Who may admit to bail.

§ 1292. Qualifications of bail and how put in, and condition of undertaking.

#### **Who may admit to bail.**

§ 1291. In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had.

Legislation § 1291. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 588); in substance the same as Crim. Prac. Act, Stats. 1851, p. 270, § 525. 2. Amended by Code Amdts. 1877-78, p. 122, adding "or by the magistrate before whom the trial was had," at end of section.

What magistrates have power to admit to bail: See ante, § 1277.

#### **Qualifications of bail and how put in, and condition of undertaking.**

§ 1292. The bail must possess the qualifications, and must be put in, in all respects, as provided in article two of this chapter, except that the undertaking must be conditioned as prescribed in section twelve hundred and seventy-three, for undertakings of bail on appeal.



Legislation § 1292. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 585); based on Crim. Prac. Act, Stats. 1851, p. 270, § 527, which read: "§ 527. The bail must possess the qualifications and must be put in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal."

#### ARTICLE V.

##### Deposit Instead of Bail.

§ 1295. Deposit, when and how made.

§ 1296. May, after bail is given and before forfeiture.

§ 1297. Deposit to be applied to payment of judgment and fine.

##### Deposit, when and how made.

§ 1295. The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

Legislation § 1295. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 586); in substance the same as Crim. Prac. Act, Stats. 1851, p. 270, § 528. Citations. Cal. 88/891.

Return of deposit on surrender before forfeiture: Post, § 1302.

##### May, after bail is given and before forfeiture.

§ 1296. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

Legislation § 1296. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 587); in substance the same as Crim. Prac. Act, Stats. 1851, p. 270, § 529.

##### Deposit to be applied to payment of judgment and fine.

§ 1297. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the county clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Legislation § 1297. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 589); in substance the same as Crim. Prac. Act, Stats. 1851, p. 271, § 530.

## ARTICLE VI.

## Surrender of the Defendant.

§ 1800. Surrender, by whom; when, and how made.

§ 1801. By whom, etc., the defendant may be arrested for the purpose of a surrender.

§ 1802. On a surrender, before forfeiture, money deposited to be refunded, etc.

Surrender, by whom; when, and how made.

§ 1300. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

Legislation § 1300. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 590); in substance the same as Crim. Prac. Act, Stats. 1851, p. 271, §§ 531, 532, subd. 2 of the latter section, however, not having the words "or appeal" after "action."

Citations. Cal. 102/812.

By whom, etc., the defendant may be arrested for the purpose of a surrender.

§ 1301. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Legislation § 1301. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 591); in substance the same as Crim. Prac. Act, Stats. 1851, p. 271, § 533.

On a surrender, before forfeiture, money deposited to be refunded, etc.

§ 1302. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

**Legislation § 1302.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 592); in substance the same as Crim. Prac. Act, Stats. 1851, p. 271, § 584.

**Deposit instead of bail:** Ante, §§ 1295 et seq.

#### ARTICLE VII.

##### Forfeiture of the Undertaking of Bail or of the Deposit of Money.

§ 1805. How forfeited, and how forfeiture discharged.

§ 1806. Forfeiture to be enforced by action.

§ 1807. Deposit of money, when forfeited, how disposed of.

##### How forfeited, and how forfeiture discharged.

§ 1305. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, must thereupon be declared forfeited. But if at any time within twenty days after such entry in the minutes, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

**Legislation § 1305.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 593, 594); in substance the same as Crim. Prac. Act, Stats. 1851, p. 271, §§ 585, 586. 2. Amendment by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 701, (1) changing, at end of first sentence, "is thereupon declared forfeited" to "must thereupon be declared forfeited"; (2) changing the first words of the second sentence from "But if at any time before the final adjournment of the court" to "But if at any time within twenty days after such entry in the minutes."

Citations. Cal. 102/313.

Forfeiture of bail where defendant does not appear at judgment: See ante, § 1195.

#### **Forfeiture to be enforced by action.**

§ 1306. If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after twenty days from the entry upon the minutes, as provided in the last section, proceed by action against the bail upon their undertaking.

Legislation § 1306. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 595); in substance the same as Crim. Prac. Act, Stats. 1851, p. 272, § 537. When enacted in 1872, § 1306 read: "1306. If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after the adjournment of the court proceed by action only against the bail upon their undertaking." 2. Amendment by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 702; the code commissioner saying, "The amendment is designed to conform the section to the amendment to § 1305."

Citations. Cal. 68/410. Crim. Prac. Act: Cal. (§ 537) 7/404; 19/682.

District attorney authorized to bring action: Pol. Code, § 4153, subd. 3.

#### **Deposit of money, when forfeited, how disposed of.**

§ 1307. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, at the end of thirty days, unless the court has before that time discharged the forfeiture, pay over the money deposited to the county treasurer.

Legislation § 1307. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 596); in substance the same as Crim. Prac. Act, Stats. 1851, p. 272, § 538, the only change being (1) to omit "as provided in section five hundred and thirty-fifth"; (2) "as provided in section five hundred and thirty-sixth"; and (3) to substitute "must" for "shall." 2. Amendment by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 702, substituting "at the end of thirty days, unless the court has before that time discharged the forfeiture," for "immediately after the final adjournment of the court," before "pay over the money deposited."

## ARTICLE VIII.

**Recommitment of the Defendant, after having Given Bail or Deposited Money Instead of Bail.**

- § 1310. Recommitment of defendant, in what cases.
- § 1311. Contents of order.
- § 1312. Defendant may be arrested in any county.
- § 1313. If for failure to appear for judgment, defendant must be committed.
- § 1314. If for other cause, he may be admitted to bail.
- § 1315. Bail in such case, by whom taken.
- § 1316. Form of the undertaking.
- § 1317. Bail must possess what qualifications, and how put in.

**Recommitment of defendant, in what cases.**

§ 1310. The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the state.

3. Upon an indictment being found or information filed in the cases provided in section nine hundred and eighty-five.

**Legislation § 1310.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 599); in substance the same as Crim. Prac. Act, Stats. 1851, p. 272, § 539. 2. Amended by Code Amdts. 1880, p. 27, (1) in the introductory paragraph, adding "information" after "an indictment," and (2) in subd. 8, adding "or information filed" after "found."

**Contents of order.**

§ 1311. The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal, or policeman in this state, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

Legislation § 1311. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 600); based on Crim. Prac. Act, Stats. 1851, p. 272, § 540, which read: "§ 540. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman, within this state, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged."

**Defendant may be arrested in any county.**

§ 1312. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

Legislation § 1312. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 601); in exact language of Crim. Prac. Act, Stats. 1851, p. 272, § 541.

**If for failure to appear for judgment, defendant must be committed.**

§ 1313. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Legislation § 1313. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 602); in substance the same as Crim. Prac. Act, Stats. 1851, p. 272, § 542.

**If for other cause, he may be admitted to bail.**

§ 1314. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Legislation § 1314. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 603); in substance the same as Crim. Prac. Act, Stats. 1851, p. 272, § 543.

**Bail in such case, by whom taken.**

§ 1315. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

Legislation § 1315. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 604); in substance the same as Crim. Prac. Act, Stats. 1851, p. 273, § 544.

#### Form of the undertaking.

§ 1316. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the — day of —, A. D. eighteen —, by the court (naming it), that A. B. be admitted to bail in the sum of — dollars, in an action pending in that court against him in behalf of the people of the state of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their places of residence and occupation), hereby undertake that the above-named A. B. will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of — dollars (insert the sum in which the defendant is admitted to bail).

Legislation § 1316. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 605); in substance the same as Crim. Prac. Act, Stats. 1851, p. 273, § 545, but which did not have the words "and occupation" after "residence."

Forms of undertaking of bail: See ante, §§ 1278, 1287.

#### Bail must possess what qualifications, and how put in.

§ 1317. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in article two of this chapter.

Legislation § 1317. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 606); in substance the same as Crim. Prac. Act, Stats. 1851, p. 273, § 546.

Qualifications of bail: See ante, § 1279.

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## CHAPTER II.

**Who may be Witnesses in Criminal Actions.**

- § 1821. Who are competent witnesses.
- § 1822. Husband and wife, when competent witnesses.
- § 1823. When the defendant is not a competent witness.

**Who are competent witnesses.**

§ 1321. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

**Legislation § 1321.** Enacted February 14, 1872.

**Citations.** Cal. 47/126; 70/54; 104/486; 106/92.

**Competency of witness:** See Code Civ. Proc., §§ 1879 et seq.

**Examination of witnesses:** Code Civ. Proc., § 2044.

**Impeachment of witness:** Code Civ. Proc., § 2051.

**Attendance of witnesses:** See post, §§ 1826 et seq.

**Defendant as witness:** See ante, § 688; post, § 1323.

**Examination of witnesses conditionally:** See post, § 1335.

**Examination of witnesses on commission:** See post, §§ 1849-1862.

**Interpreter, acts relating to appointment of:** See post, Appendix, tit. "Interpreters."

**Interpreter, when sworn:** Code Civ. Proc., § 1884.

**Judge or juror as witness:** Code Civ. Proc., § 1883.

**Rules of examination of witnesses:** Code Civ. Proc., §§ 2042-2054.

**Witness, defined:** Code Civ. Proc., § 1878.

**Witness, duties and rights of:** Code Civ. Proc., §§ 2042-2054.

**Husband and wife, when competent witnesses.**

§ 1322. Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings brought under the provisions of sections two hundred and seventy and two hundred and seventy a of this code, or in cases of criminal actions or proceedings for bigamy or adultery.

**Legislation § 1322.** 1. Enacted February 14, 1872; based on Stats. 1865-66, p. 46, § 1, which read: "Section 1. In all criminal actions where the husband is the party accused, the wife shall be a competent witness, and when the wife is the party accused, the husband shall be a competent witness; but neither husband nor wife shall be compelled or allowed to testify in such cases unless by consent of both of them; provided, that in all cases of personal violence upon either by the other, the injured party (husband or wife) shall



be allowed to testify against the other." When enacted in 1872, § 1322 read: "1322. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties." 2. Amended by Code Amdts. 1873-74, p. 451, changing "neither husband nor wife are competent witnesses for or against each other" to "neither husband nor wife is a competent witness for or against the other." 3. Amended by Stats. 1905, p. 140, and differed from the amendment of 1907 (the present section), (1) not enumerating § 270a, and (2) not having the words "or adultery" at end of section. 4. Amended by Stats. 1907, p. 290. Citations. Cal. 64/257, 259; 70/54; 73/637; 137/536. App. 4/72; 8/740.

Husband or wife as witness: See Code Civ. Proc., § 1881, subd. 1.

#### When the defendant is not a competent witness.

§ 1323. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him nor be used against him on the trial or proceeding.

Legislation § 1323. 1. Enacted February 14, 1872; based on (1) Stats. 1865-66, p. 865, §§ 1, 2, which read: "Section 1. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; the credit to be given to his testimony being left solely to the jury, under the instructions of the court. Sec. 2. Nothing herein contained shall be construed as compelling any such person to testify." Also based on (2) Crimes and Punishment Act, as amended and supplemented by Stats. 1867-68, p. 49, § 1, which read: "Section 1. In a criminal action a felon shall be a competent witness for or against a felon for an offense committed when both are under judgment of imprisonment in the state prison." When enacted in 1872, § 1323 read: "1323. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give such consent shall not in any manner prejudice him nor be used against him on the trial or proceeding." 2. Amended by Code Amdts. 1873-74, p. 451.

Citations. Cal. 47/126; 53/67; 57/573; 66/603, 604; 70/54; 73/245; 75/386, 387, 388, 416; 78/92, 94; 81/116; 83/139, 378; 98/288; 99/361, 442; 100/475, 481, 482; 104/487; 113/461; 122/126, 497; 134/142, 689; 143/388; 145/506; 150/19; 151/311, 318. App. 3/6; 4/436; 7/359, 604; 8/117, 118, 189.

Defendant cannot be compelled to be witness against himself: See ante, § 688.

## CHAPTER III.

**Compelling the Attendance of Witnesses.**

- § 1326. Subpœna defined, and who may issue.
- § 1327. Form of subpœna.
- § 1328. Subpœna, by whom and how served.
- § 1329. Fees of witnesses, when from without county.
- § 1330. Witness residing or served with subpœna out of the county, how compelled to attend.
- § 1331. Disobedience to subpœna, etc.
- § 1332. Failure to appear, undertaking forfeited.
- § 1333. Who may order temporary removal of imprisoned witnesses. By whom executed.

**Subpœna defined, and who may issue.**

§ 1326. The process by which the attendance of a witness before a court or magistrate is required is a subpœna; it may be signed and issued by:

1. A magistrate before whom a complaint is laid, for witnesses in the state, either on behalf of the people or of the defendant.
2. The district attorney, for witnesses in the state, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.
3. The district attorney, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.
4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as clerk, for witnesses in the state, as the defendant may require.

Legislation § 1326. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 607-611); based on Crim. Prac. Act, Stats. 1851, p. 273, §§ 547-551, which read: "§ 547. The process by which the attendance of a witness before a court or magistrate is required, is a subpœna. § 548. A magistrate before whom an information is laid, may issue subpœnas, subscribed by him, for witnesses within the state, either on behalf of the people or of the defendant. § 549. The district attorney may issue subpœnas, subscribed by him, for witnesses within the state, in support of the prosecution, or for such other witnesses as the grand jury, upon any investigation pending before them, may direct. § 550. The district attorney may in like manner issue subpœnas subscribed by him, for witnesses within the state, in support of an indictment to appear before the court at which it is to be tried. § 551. The

clerk of the court at which an indictment is to be tried shall at all times upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses within the state, as may be required by the defendant." 2. Amended by Code Amdts. 1880, p. 27, (1) in subd. 1, changing "an information" to "a complaint"; (2) in subds. 3 and 4, adding "or information" after "indictment."

Subpoena, defined: Code Civ. Proc., § 1985.

#### Form of subpoena.

§ 1327. A subpoena authorized by the last section must be substantially in the following form:

The People of the State of California to A. B.:

You are commanded to appear before C. D., a justice of the peace of — township, in — county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the state of California against E. F.

Given under my hand this — day of —, A. D. eighteen [nineteen] —. G. H., Justice of the Peace, (or "J. K., District Attorney," or "By order of the court, L. M., Clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Legislation § 1327. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 612); in substance the same as Crim. Prac. Act, Stats. 1851, p. 273, §§ 552, 553.

#### Subpoena, by whom and how served.

§ 1328. A subpoena may be served by any person, but a peace-officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

Legislation § 1328. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 614, 615); based on Crim. Prac. Act, Stats. 1851, p. 274, §§ 554, 555, which read: "§ 554. A peace-officer must serve within his county any subpoena delivered to him for service, either on the part of the people or of

the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service without delay. § 555. The service of a subpoena shall be by showing the original to the witness personally, and informing him of the contents." 2. Amendment by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante.

**Subpoena, how served in civil cases:** Code Civ. Proc., § 1987.

#### **Fees of witnesses, when from without county.**

§ 1329. When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpoena or in pursuance of an undertaking, and it appears that he has come from a place outside of the county, or that he is poor and unable to pay the expenses of such attendance, the court, at its discretion, if the attendance of the witness be upon a trial, by an order upon its minutes, or, in any other case, the judge, at his discretion, by a written order, may direct the county auditor to draw his warrant upon the county treasurer in favor of witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

**Legislation § 1329.** 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 274, §§ 556, 557. When enacted in 1872, § 1329 read: "1329. When a person attends before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpoena or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or, in any other case, the county judge, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order, for his expenses. Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury." 2. Amended by Code Amdts. 1875-76, p. 117.

**Citations.** Cal. 64/244; 109/834, 835; 130/676, 677. Crim. Prac. Act: Cal. (§ 556) 36/555, 557; (§ 557) 36/555, 557.

#### **Witness residing or served with subpoena out of the county, how compelled to attend.**

§ 1330. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the judge of the court in which the offense is triable, or a justice of the supreme court, or a judge of a superior court, upon an affidavit of the district attorney or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the

examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness.

**Legislation § 1330.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 618); in substance the same as Crim. Prac. Act, Stats. 1851, p. 274, § 558. 2. Amended by Code Amdts. 1880, p. 84, substituting "a judge of a superior court" for "a county judge."

**Citations.** Cal. 70/205; 182/805.

#### **Disobedience to subpoena, etc.**

§ 1331. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

**Legislation § 1331.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §-619); in substance the same as Crim. Prac. Act, Stats. 1851, p. 274, §§ 559, 561.

**Contempts:** Code Civ. Proc., §§ 1209-1222.

#### **Failure to appear, undertaking forfeited.**

§ 1332. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

**Legislation § 1332.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 274, § 560, which read: "§ 560. Where a witness has entered into a recognizance to appear, as provided in section one hundred and seventieth, upon his failure to do so his recognizance shall [be] forfeited in the same manner as recognizances of bail."

#### **Who may order temporary removal of imprisoned witnesses. By whom executed.**

§ 1333. When the testimony of a material witness for the people is required in a criminal action, before a court of record of this state, and such witness is a prisoner in the state prison, or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof; but in case the prison or jail is out of the county in which the application is made, such order shall only be made upon the affidavit of the district attorney,

or other person, on behalf of the people, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of the court or judge. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the county in which the order shall be made.

Legislation § 1333. Added by Code Amdts. 1877-78, p. 123.

Citations. Cal. 82/457, 461, 468, 468.

Deposition of prisoner, when and how taken: See post, § 1346.

Prisoner as witness, proceedings on bringing in: See post, § 1567.

## CHAPTER IV.

### Examination of Witnesses Conditionally.

- § 1335. Examination of witnesses conditionally.
- § 1336. In what cases an order may be applied for.
- § 1337. Application, how made.
- § 1338. Application, to whom made.
- § 1339. Order, what to contain.
- § 1340. Defendant has right to be present at examination.
- § 1341. Examination not to proceed, when.
- § 1342. Attendance of witness, how enforced.
- § 1343. Testimony, how taken and authenticated.
- § 1344. Deposition to be transmitted to clerk.
- § 1345. When may be read in evidence. Subject to objections, etc.
- § 1346. Deposition of witnesses who are prisoners in other counties.

### Examination of witnesses conditionally.

§ 1335. When a defendant has been held to answer a charge for a public offense, he, in all cases, and the people in cases other than of homicide, may, either before or after an indictment or information, have witnesses examined conditionally in his or their behalf, as prescribed in this chapter.

Legislation § 1335. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 620); in substance the same as Crim. Prac. Act, Stats. 1851, p. 274, § 562. When enacted in 1872, § 1335 read: "1335. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his

behalf, as prescribed in this chapter, and not otherwise." 2. Amended by Code Amdts. 1880, p. 27, inserting "or information" after "indictment." 3. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 702; the code commissioner saying in his note to §§ 1385-1341, "By the amendment to the above sections, the provisions of the statute respecting the conditional examination of witnesses have been extended so far as may be constitutionally done, to the end that the prosecution, except in cases of homicide, may have the same privilege as the accused of taking conditionally the testimony of witnesses who are about to leave the state, or who are so sick and infirm as to afford reasonable grounds for apprehending that they will be unable to attend the trial. The proposed change is within the contemplation of that part of § 13 of article I of the constitution, which provides that 'the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend the trial.'"

Citations. Crim. Prac. Act: Cal. (§ 562) 38/186, 187.

#### **In what cases an order may be applied for.**

§ 1336. When a material witness for the defendant, or for the people, is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he will be unable to attend the trial, the defendant or the people may apply for an order that the witness be examined conditionally.

Legislation § 1336. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 621); reading the same as Crim. Prac. Act, Stats. 1851, p. 275, § 568, but omitting the words "on a commiasion" from end of section. When enacted in 1872, § 1386 read: "1386. When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally." 2. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 702. See ante, Legislation § 1385, for code commissioner's note.

Citations. Cal. 66/396; 82/468. Crim. Prac. Act: Cal. (§ 568) 186.

#### **Application, how made.**

§ 1337. The application must be made upon affidavit stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense or the prosecution of the action;

4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

**Legislation § 1337.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 622); based on Crim. Prac. Act, Stats. 1851, p. 275, § 566, which, in subd. 3, did not have the words "and residence" after "The name." 2. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 708, in subd. 3, adding "or the prosecution" after "material to the defense." See ante, Legislation § 1385, for code commissioner's note.

**Citations.** Cal. 82/468. Crim. Prac. Act: Cal. (§ 566) 38/186.

#### **Application, to whom made.**

§ 1338. The application may be made to the court or a judge thereof, and must be made upon three days' notice to the opposite party.

**Legislation § 1338.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 623); in substance the same as Crim. Prac. Act, Stats. 1851, p. 275, § 567. When enacted in 1872, § 1338 read: "1338. The application may be made to the court during the term thereof, or to the judge in vacation, and must be upon three days notice to the district attorney." 2. Amended by Code Amdts. 1880, p. 5, to read: "1338. The application may be made to the court, or to a judge thereof, and must be upon three days' notice to the district attorney." 3. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 703. See ante, Legislation § 1385, for code commissioner's note.

#### **Order, what to contain.**

§ 1339. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and before a magistrate designated therein.

**Legislation § 1339.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 625); based on Crim. Prac. Act, Stats. 1851, p. 275, §§ 568, 569, which read: "§ 568. If the court or judge to whom the application is made be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony. § 569. If the application for a commission be granted, the court or judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission." 2. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 703, at end of section, substituting "and before



a magistrate designated therein" for "and that a copy of the order be served on the district attorney, within a specified time before that fixed for the examination." See ante, Legislation § 1335, for code commissioner's note.

#### **Defendant has right to be present at examination.**

§ 1340. The defendant has the right to be present in person and with counsel at such examination, and if the defendant is in custody, the officer in whose custody he is, must be informed of the time and place of such examination, and must take the defendant thereto, and keep him in the presence and hearing of the witness during the examination.

Legislation § 1340. 1. Enacted February 14, 1872, and then read: "1340. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the district attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed." 2. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 703. See ante, Legislation § 1335, for code commissioner's note.

#### **Examination not to proceed, when.**

§ 1341. If, at the time and place so designated, it is shown to the satisfaction of the magistrate that the witness is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place.

Legislation § 1341. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 628), and then read: "1341. If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed." 2. Amendment by Stats. 1901, p. 496; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 703. See ante, Legislation § 1335, for code commissioner's note.

#### **Attendance of witness, how enforced.**

§ 1342. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

Legislation § 1342. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 684.)

**Testimony, how taken and authenticated.**

§ 1343. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

Legislation § 1343. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 629.)

**Deposition to be transmitted to clerk.**

§ 1344. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

Legislation § 1344. Enacted February 14, 1872.

**When may be read in evidence. Subject to objections, etc.**

§ 1345. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the state. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness has been examined orally in court.

Legislation § 1345. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 631); based on Crim. Prac. Act, Stats. 1851, p. 277, § 582, which read: "§ 582. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any question in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in court."

Citations. Cal. 75/308; 108/445.

**Deposition of witnesses who are prisoners in other counties.**

§ 1346. When a material witness for a defendant, under a criminal charge, is a prisoner in the state prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken

before any magistrate or notary public of the county in which the jail or prison is situated; or in case the witness is confined in the state prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the state prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth.

**Legislation § 1346.** 1. Added by Code Amdts. 1877-78, p. 123. 2. Amended by Code Amdts. 1880, p. 28, (1) in first sentence, changing "under indictment" to "under a criminal charge"; (2) in second sentence, omitting "deputy warden" after "warden."

**Citations.** Cal. 82/457, 463.

## CHAPTER V.

### Examination of Witnesses on Commission.

- § 1349. Witness residing out of the state, when to be examined.
- § 1350. When defendant may apply for an order to examine, etc.
- § 1351. Commission defined.
- § 1352. Application made on affidavit.
- § 1353. Application to whom made.
- § 1354. Order of commission, when granted and stay of proceedings.
- § 1355. Interrogations, how settled and allowed.
- § 1356. Direction as to the return of the commission.
- § 1357. Execution of commission to take testimony.
- § 1358. Commission how returned when delivered to an agent for that purpose.
- § 1359. Same.
- § 1360. When and how filed.
- § 1361. Commission and return to be open for inspection. Copies, etc.
- § 1362. Depositions to be read in evidence. Objections thereto.

#### **Witness residing out of the state, when to be examined.**

§ 1349. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise.

**Legislation § 1349.** 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 636.) 2. Amended by Code Amdts. 1880, p. 28, inserting "or information" after "indictment."

**Citations.** Cal. 84/26.

**When defendant may apply for an order to examine, etc.**

§ 1350. When a material witness for the defendant resides out of the state, the defendant may apply for an order that the witness be examined on a commission.

Legislation § 1350. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 637.)

**Commission defined.**

§ 1351. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

Legislation § 1351. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 638); in substance the same as Crim. Prac. Act, Stats. 1851, p. 275, § 564.

**Application made on affidavit.**

§ 1352. The application must be made upon affidavit, stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the state.

Legislation § 1352. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 639); based on Crim. Prac. Act, Stats. 1851, p. 275, § 566, which read: "§ 566. The application must be made upon affidavit, showing: First, the nature of the offense charged. Second, the state of the proceedings in the action. Third, the name of the witness, and that his testimony is material to the defense of the action. Fourth, that the witness is about to leave the state or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial."

**Application to whom made.**

§ 1353. The application may be made to the court, or a judge thereof, and must be upon three days' notice to the district attorney.

Legislation § 1353. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 642); in the exact language of Crim. Prac. Act, Stats. 1851, p. 275, § 567. When enacted in 1872, § 1353 read: "1353. The application may

be made to the court during the term, or to the judge in vacation, and must be upon three days' notice to the district attorney." 2. Amended by Code Amdts. 1880, p. 6.

#### **Order of commission, when granted and stay of proceedings.**

§ 1354. If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

**Legislation § 1354.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 643, 644); in substance the same as Crim. Prac. Act, Stats. 1851, p. 275, §§ 568, 569. 2. Amended by Code Amdts. 1880, p. 28, (1) omitting "or judge" after "If the court" and after "and the court"; (2) changing "that the trial of the indictment be stayed" to "that the trial be stayed." Citations. Cal. 84/26; 108/11.

#### **Interrogations, how settled and allowed.**

§ 1355. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

**Legislation § 1355.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 645-648); in substance the same as Crim. Prac. Act, Stats. 1851, p. 275, §§ 570-573.

#### **Direction as to the return of the commission.**

§ 1356. Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must be returned, and may, in

his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

**Legislation § 1356.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 649); in substance the same as Crim. Prac. Act, Stats. 1851, p. 276, § 574.

#### **Execution of commission to take testimony.**

§ 1357. The commissioner, unless otherwise specially directed, may execute the commission as follows:

First. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

Second. He must cause the examination of the witness to be reduced to writing and subscribed by him.

Third. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

Fourth. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

Fifth. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

Sixth. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.

Seventh. If there be a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner must comply with the direction.

A copy of this section must be annexed to the commission.

**Legislation § 1357.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 650, 651); in substance the same as Crim. Prac. Act, Stats. 1851, p. 276, §§ 575, 576. 2. Amended by Code Amdta. 1878-74, p. 451, (1) in

subd. 1, adding "and subscribed by him" at end of subdivision; (2) in subd. 4, changing "declines" to "decline"; (3) in subd. 5, adding "or copies of them" before "must be annexed"; (4) in subd. 6, adding "or copies thereof" before "to the commission"; (5) in subd. 7, changing (a) "is" to "be" after "If there" and after "other direction," and (b) "he" to "the commissioner."

#### Commission how returned when delivered to an agent for that purpose.

§ 1358. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

Legislation § 1358. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 652); in substance the same as Crim. Prac. Act, Stats. 1851, p. 276, § 577. 2. Amended by Code Amdts. 1880, p. 28, substituting (1) "be" for "is" before "delivered," and (2) "action" for "indictment."

#### Same.

§ 1359. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

Legislation § 1359. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 653); in substance the same as Crim. Prac. Act, Stats. 1851, p. 276, § 578.

#### When and how filed.

§ 1360. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

Legislation § 1360. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 654, 655); based on Crim. Prac. Act, Stats. 1851, p. 276, §§ 579, 580, the latter section not having the words "by the court or judge."

**Commission and return to be open for inspection. Copies, etc.**

§ 1361. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

Legislation § 1361. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 656); in substance the same as Crim. Prac. Act, Stats. 1851, p. 277, § 581.

**Depositions to be read in evidence. Objections thereto.**

§ 1362. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

Legislation § 1362. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 657); in substance the same as Crim. Prac. Act, Stats. 1851, p. 277, § 582.

## CHAPTER VI.

**Inquiry into the Insanity of the Defendant before Trial or after Conviction.**

- § 1367. An insane person cannot be tried, sentenced, or punished for a public offense.
- § 1368. Doubt as to sanity of defendant. Examination of, before jury. Stay of proceedings.
- § 1369. Order of the trial of the question of insanity. Charge of the court.
- § 1370. Verdict of the jury as to sanity, and proceedings thereon.
- § 1371. If defendant is committed, it exonerates his bail, etc.
- § 1372. Defendant detained in hospital until he becomes sane.
- § 1373. Expenses of sending, etc., defendant to hospital, a charge against county.

**An insane person cannot be tried, sentenced, or punished for a public offense.**

§ 1367. A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.



**Legislation § 1367.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 277, § 583, which read: "§ 583. An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished for a public offense, while he is insane." The code commissioners say: "The words 'An act done by a person in a state of insanity cannot be punished as a public offense,' which were in the original section, are omitted. They prescribed a rule by which responsibility was to be measured, and not a rule of criminal procedure, and for that reason are in substance incorporated in the first part of this code."

**Citations.** Cal. 105/340; 106/56; 126/427, 616; 129/331, 332; 142/333. Crim. Prac. Act: Cal. (§ 583) 31/579.

**Acquittal on the ground of insanity:** Ante, § 1167.

**Criminal liability of insane persons:** See ante, § 26.

**Doubt as to sanity of defendant. Examination of, before jury. Stay of proceedings.**

**§ 1368.** If at any time during the pendency of an action up to and including the time when defendant is brought up for judgment on conviction a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity.

**Legislation § 1368.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 277, §§ 584, 585, which read: "§ 584. When an indictment is called for trial, or upon conviction, the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned as prescribed in section three hundred and forty-one, to inquire into the fact. § 585. The trial of the indictment or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury." When enacted in 1872, § 1368 read: "1368. When an indictment is called for trial, if a doubt arises as to the sanity of the defendant, the court must order the question to be submitted to a jury; where such doubt arises on the defendant being brought up for judgment on conviction, the court must order a jury to be summoned from the list of jurors selected by the supervisors for the year, to inquire into the fact; and the trial of the indictment or the pronouncing of the judgment must be suspended until the question of insanity is determined by the verdict of the jury." 2. Amended by Code Amdts. 1873-74, p. 452, to read: "1368. When an indictment is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on

conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial of the indictment, or the pronouncing of the judgment, must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity." 3. Amended by Code Amdts. 1880, p. 28, (1) changing "When an indictment" to "When an action"; (2) omitting "of the indictment" after "and the trial." 4. Amended by Stats. 1905, p. 222.

Citations. Cal. 67/380; 85/301, 302, 303; 105/340; 106/51; 116/441; 126/426, 427; 616; 132/805; 138/379. App. 4/512, 513; 7/555. Crim. Prac. Act: Cal. (§ 584) 31/580.

Insanity as a defense generally: Ante, § 26.

Order of trial: Ante, § 1369.

Acquittal on the ground of insanity: See ante, § 1167.

#### **Order of the trial of the question of insanity. Charge of the court.**

§ 1369. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Legislation § 1369. Enacted February 14, 1872 (based on Crim. Prac. Act, Stats. 1851, p. 277, §§ 586, 587), (1) in subd. 1, changing "shall open" to "must open"; (2) in subd. 2, changing "shall open" to "may then open"; (3) in subd. 5, changing "shall be restricted" to "may be restricted"; (4) in subd. 6, (a) changing "shall then" to

"must then," (b) omitting, after "the jury," the words "if requested by either party," and (c) adding "stating to them all matters of law necessary for their information in giving their verdict," this latter being in substance § 587 of the Practice Act, which read, "§ 587. The provisions of section three hundred and ninety-nine, in respect to the charge of the court to the jury upon the trial of an indictment, shall apply to the question of insanity." See ante, Legislation § 1127, for § 899.

Citations. Cal. 105/840; 126/426, 616.

### Verdict of the jury as to sanity, and proceedings thereon.

§ 1370. If the jury finds the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the mean time committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff.

Legislation § 1370. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 659); based on Crim. Prac. Act, Stats. 1851, p. 278, §§ 588, 589, the latter section having "custody of some proper person" instead of "state lunatic asylum," the words of the original code section. When enacted in 1872, § 1370 read: "1370. If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court, if he deems his discharge dangerous to the public peace or safety, may order that he be in the mean time committed by the sheriff to the state lunatic asylum, and that upon his becoming sane he be redelivered to the sheriff." 2. Amended by Code Amdts. 1878-74, p. 458, changing the latter part of the section to read, "and the court must order that he be in the mean time committed by the sheriff to the state insane asylum, and that upon his becoming sane he be redelivered to the sheriff." 3. Amended by Code Amdts. 1880, p. 29, changing the first sentence to read, "If the jury find the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be." 4. Amended by Stats. 1901, p. 495; unconstitutional: See note, § 5, ante. 5. Amended by Stats. 1905, p. 704.

Citations. Cal. 126/617; 129/331; 138/380. Crim. Prac. Act: Cal. (§ 589) 81/580.

Insane defendant, redelivery to sheriff on discharge from asylum: See Pol. Code, § 2189.

If defendant is committed, it exonerates his bail, etc.

§ 1371. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to

receive the property of the defendant, to a return of any money he may have deposited instead of bail.

**Legislation § 1371.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 660); in substance the same as Crim. Prac. Act, Stats. 1851, p. 278, § 590. Exoneration of bail on commitment of defendant: See ante, § 1166.

**Defendant detained in hospital until he becomes sane.**

§ 1372. If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

**Legislation § 1372.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 661); based on Crim. Prac. Act, Stats. 1851, p. 278, § 591, which read: "§ 591. If the defendant be received by the person so appointed, he must be detained by him until he becomes sane. When he becomes sane such person shall give notice to the sheriff and district attorney of the county of that fact. The sheriff shall thereupon, without delay, take the defendant from the custody of such person and place him in proper custody until he be brought to trial or judgment as the case may be, or be otherwise legally discharged." 2. Amendment by Stats. 1901, p. 497; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 704, (1) in first sentence, changing "asylum" to "state hospital"; (2) in second sentence, changing "give notice of" to "certify"; (3) in final sentence, changing "asylum" to "state hospital."

**Citations.** Cal. 126/616, 617; 129/881, 882. Crim. Prac. Act: Cal. (§ 591) 81/581.

**Expenses of sending, etc., defendant to hospital, a charge against county.**

§ 1373. The expenses of sending the defendant to the state hospital, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he has any, or from a relative, town, city, or county bound to provide for and maintain him.

**Legislation § 1373.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 662); based on Crim. Prac. Act, Stats. 1851, p. 278, § 592, which read: "§ 592. The expenses of placing the defendant in the custody of such

proper person, of keeping him and bringing him back, shall in the first instance be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city, or county, bound to provide for and maintain him elsewhere." When enacted in 1872, § 1378 differed from the amendment of 1905, (1) having "asylum" instead of "state hospital"; (2) not having "or information filed" after "was found"; (3) having "elsewhere" at end of section." 2. Amended by Code Amdts. 1880, p. 29, differing from the amendment of 1905, having (1) "asylum" instead of "state hospital," and (2) "elsewhere," after "maintain him," at end of section. 3. Amendment by Stats. 1901, p. 497; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 704.

Citations. Cal. 126/616; 129/331; 138/380, 381, 382, 383. App. 4/512, 518.

## CHAPTER VII.

### Compromising Certain Public Offenses by Leave of the Court.

- § 1377. Certain offenses for which the party injured has a civil action may be compromised.
- § 1378. Compromise to be by permission of the court. Order thereon to bar another prosecution.
- § 1379. No public offense to be compromised except as herein provided.

Certain offenses for which the party injured has a civil action may be compromised.

§ 1377. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony.

Legislation § 1377. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 668); in substance the same as Crim. Prac. Act, Stats. 1851, p. 288, § 675.

Compromise to be by permission of the court. Order thereon to bar another prosecution.

§ 1378. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the

court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

**Legislation § 1378.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 664, 665); in substance the same as Crim. Prac. Act, Stats. 1851, p. 288, §§ 676, 677.

**Restoration of property embezzled, ground for mitigation of punishment:** Ante, § 513.

**No public offense to be compromised except as herein provided.**

§ 1379. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

**Legislation § 1379.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 666); in substance the same as Crim. Prac. Act, Stats. 1851, p. 288, § 678.

## CHAPTER VIII.

### Dismissal of the Action, before or after Indictment, for Want of Prosecution or Otherwise.

§ 1382. When action may be dismissed.

§ 1383. Court may order action to be continued and discharge defendant from custody, when and how.

§ 1384. If action dismissed, defendant to be discharged, etc.

§ 1385. Court may, of own motion or on application of district attorney, order action dismissed.

§ 1386. Nolle prosequi abolished.

§ 1387. Dismissal of actions, order for a bar in misdemeanor but not in felony.

§ 1388. Judgment suspended in the case of a minor, when. Period of suspension.

§ 1389. Prohibiting visits of minors in employ of corporations or persons to houses of questionable repute. [Repealed.]

#### When action may be dismissed.

§ 1382. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. When a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment, or filing of the information.

**Legislation § 1382.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 667); based on Crim. Prac. Act, Stats. 1851, p. 278, §§ 593, 594, which read: "§ 593. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. § 594. If a defendant, indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown." When enacted in 1872, § 1382 read: "1382. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases: 1. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer; 2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the court in which the indictment is triable, after it is found."

2. Amended by Code Amdts. 1880, p. 29.

**Citations.** Cal. 54/101, 413, 414; 63/346; 65/218; 69/540; 74/576; 82/109; 85/516; 91/29; 99/101; 100/3, 6; 113/284, 285; 116/154; 127/374; 133/357; 140/658; 144/56; (subd. 2) 77/447; 116/152; 127/373; 130/162; 133/351; 136/294; 154/244. App. 3/484; 5/556; 7/773; (subd. 1) 5/555; (subd. 2) 2/780; 5/555. Crim. Prac. Act: Cal. (§ 594) 19/549.

**Dismissal before indictment:** See ante, § 941.

**Time to file information:** See ante, § 809.

**Speedy trial, right of defendant to:** See ante, § 686.

**Court may order action to be continued and discharge defendant from custody, when and how.**

§ 1383. If the defendant is not charged or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the mean time may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

**Legislation § 1383.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 669); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 595. 2. Amended by Code Amdts. 1880, p. 29, changing (1) "indicted or tried" to "charged or tried," and (2) "term to term" to "time to time."

**Citations.** Cal. 54/413. Crim. Prac. Act: Cal. (§ 595) 19/550.

**If action dismissed, defendant to be discharged, etc.**

§ 1384. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

**Legislation § 1384.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 670); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 596.  
**Citations.** Cal. 54/414.

**Court may, of own motion or on application of district attorney, order action dismissed.**

§ 1385. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

**Legislation § 1385.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 671); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 597.  
**Citations.** Cal. 48/258; 64/263; 71/546; 85/590; 127/64; 130/75; 132/16; 143/599; 144/635. App. 2/180; 5/425.

**Nolle prosequi abolished.**

§ 1386. The entry of a nolle prosequi is abolished, and neither the attorney-general nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

**Legislation § 1386.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 672); based on Crim. Prac. Act, Stats. 1851, p. 279, § 598, which read: "§ 598. Neither the attorney-general or the district attorney shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section."  
**Citations.** Cal. 85/590.

**Dismissal of actions, order for a bar in misdemeanor but not in felony.**

§ 1387. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, unless such order is explicitly made for the purpose of amending the complaint in such action, in which instance such order for dismissal of the action shall not act as a bar to a prosecution upon such amended complaint; but an order for the dismissal of the action is not a bar if the offense is a felony.



**Legislation § 1387.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 673); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 599. When enacted in 1872, § 1387 read: "1387. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony." 2. Amended by Stats. 1905, p. 724; the code commissioner saying, "Inserts in the section relating to an order for dismissal being a bar in cases of misdemeanor, a provision that where the order explicitly is made for the purpose of allowing an amended complaint to be filed, the order for dismissal shall not constitute a bar. This revision corrects a manifest abuse."

**Citations.** Cal. 48/258; 52/464; 64/268; 123/455; 127/64; 130/75; 132/16; 136/295, 299; 143/599; 144/48; 154/245. App. 2/180; 5/426.

**Judgment suspended in the case of a minor, when. Period of suspension.**

§ 1388. Final judgment may be suspended on any conviction, charge, or prosecution of a minor, for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provisions: During the period of such suspension, or of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such minor to the custody of the officers or managers of any strictly non-sectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable), and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his offense. Such charitable corporation must accept the custody of said minor as aforesaid, upon the distinct agreement that it and its officers will use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend can be entertained by any court during the period of such suspension and custody, save upon recommendation of the court before which the criminal proceed-

ings are pending. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of twenty five dollars, which sum includes board, clothing, transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending, or direct action to be instituted for the recovery thereof out of the estate of such minor, or from his parents. Such court may also revoke such order of suspension at any time.

Legislation § 1388. 1. Added by Stats. 1883, p. 377. 2. Amendment by Stats. 1901, p. 497; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 704, in first sentence, (a) adding "of a minor" after "or prosecution," and (b) omitting "a" before "reasonable ground"; (2) in sentence beginning "Such corporation," changing "misdemeanor" to "offense," at end of sentence; (3) in sentence beginning "Such charitable," changing (a) "shall accept custody" to "must accept the custody," and (b) "officers shall use" to "officers will use"; (4) in sentence beginning "No application," (a) changing "or friend shall" to "or friend can," and (b) omitting "first obtained" from end of sentence; (5) in sentence beginning "Such court may," changing (a) "the sum of \$25 (twenty-five dollars), which sum shall include," to "the sum of twenty-five dollars, which sum includes," and (b) "said minor" to "such minor."

Citations. Cal. 71/628, 681, 688; 98/640; 118/588.

Probationary treatment: See ante, §§ 1203, 1215.

§ 1389. [Prohibiting visits of minors in employ of corporations or persons to houses of questionable repute. Repealed.]

Legislation § 1389. 1. Added by Stats. 1887, p. 119. 2. Repeal by Stats. 1901, p. 498; unconstitutional: See note, § 5, ante. 3. Repealed by Stats. 1905, p. 761; the code commissioner saying, "The matter in § 1389, which has incorrectly stood in a chapter entitled 'Dismissal of the Action,' is put into a new section designated as 278e, and is put in its proper chapter, with the other sections relative to children, and § 1389 accordingly repealed."

## CHAPTER IX.

## Proceedings against Corporations.

- § 1390. Summons upon information, etc., against; by whom issued and when returnable.
- § 1391. Form of summons.
- § 1392. When and how served.
- § 1393. Examination of the charge.
- § 1394. Certificate of the magistrate, and return thereof with the depositions.
- § 1395. Grand jury to investigate if magistrate certifies there is sufficient cause.
- § 1396. Appearance and plea.
- § 1397. Fine on conviction, how collected.

**Summons upon information, etc., against; by whom issued and when returnable.**

§ 1390. Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

**Legislation § 1390.** 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 675.) 2. Amendment by Stats. 1901, p. 498; unconstitutional: See note, § 5, ante.

**Citations.** App. 4/721.

**Form of summons.**

§ 1391. The summons must be substantially in the following form:  
County of (as the case may be).

The People of the State of California to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city (or township) of —, this — day of —, eighteen [nineteen] —.

G. H., Justice of the Peace (or as the case may be).

**Legislation § 1391.** 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 676.) 2. Amendment by Stats. 1901, p. 498; unconstitutional: See note, § 5, ante.

Citations. App. 4/721, 722.

Summons, issuance and form of: See post, § 1427.

#### **When and how served.**

§ 1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

Legislation § 1392. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 677.)

Time and manner of service of summons: See post, § 1427.

#### **Examination of the charge.**

§ 1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

Legislation § 1393. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 678.)

#### **Certificate of the magistrate, and return thereof with the depositions.**

§ 1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in section eight hundred and eighty-three.

Legislation § 1394. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 679.)

#### **Grand jury to investigate if magistrate certifies there is sufficient cause.**

§ 1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer.

Legislation § 1395. 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 680.) 2. Amended by Code Amdts. 1880, p. 29, inserting "or the district attorney file an information," after "the grand jury may proceed."

#### **Appearance and plea.**

§ 1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not

thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

**Legislation § 1396.** 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 681.) 2. Amended by Code Amdts. 1880, p. 29, inserting "or information filed" after "If an indictment is found."

**Plea by corporation:** See ante, § 1018.

**Proceedings if corporation does not appear:** See post, § 1427.

**Fine on conviction, how collected.**

§ 1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

**Legislation § 1397.** Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 682.)

**Citations.** App. 4/721.

## CHAPTER X.

### Entitling Affidavits.

§ 1401. Affidavits defectively entitled, valid.

**Affidavits defectively entitled, valid.**

§ 1401. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made.

**Legislation § 1401.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 683); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 600. 2. Amended by Code Amdts. 1880, p. 30, (1) inserting "or information" after "indictment" in first instance, and (2) "information" after "indictment" in second instance.

**Erroneous title or want of title, effect of:** See post, §§ 1460, 1568.

## CHAPTER XI.

**Errors and Mistakes in Pleadings and Other Proceedings.**

§ 1404. When not material.

**When not material.**

§ 1404. Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

**Legislation § 1404.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 684); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 601.

**Citations.** Cal. 48/559; 49/390; 53/494; 57/90, 98, 99, 100; 59/384; 62/520, 521; 64/213, 372, 426; 67/56; 93/588; 94/119; 96/319; 102/242; 115/306; 116/198; 120/668; 133/124; 138/536; 139/117. App. 1/15; 7/168, 608, 621. Crim. Prac. Act: Cal. (§ 601) 28/329, 381; 33/101; 62/520.

**Errors not affecting substantial rights:** See ante, §§ 960, 1258.

## CHAPTER XII.

**Disposal of Property Stolen or Embezzled.**

- § 1407. When it comes into the custody of the peace-officer, he must hold it subject to the order of magistrate.
- § 1408. Order for its delivery to owner.
- § 1409. When it comes into the custody of the magistrate, he must deliver it to owner.
- § 1410. Court in which trial is had may order its delivery.
- § 1411. If not claimed in six months to be delivered to county treasurer.
- § 1412. Receipt by officers for money, etc., taken from a person arrested for a public offense.
- § 1413. Duties of persons having charge of police-offices in incorporated cities or towns.

**When it comes into the custody of the peace-officer, he must hold it subject to the order of magistrate.**

§ 1407. When property, alleged to have been stolen or embezzled, comes into the custody of a peace-officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Legislation § 1407. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 685); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 602.

**Order for its delivery to owner.**

§ 1408. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Legislation § 1408. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 686); in substance the same as Crim. Prac. Act, Stats. 1851, p. 279, § 608. Stolen or embezzled property, how disposed of: See post, § 1586.

**When it comes into the custody of the magistrate, he must deliver it to owner.**

§ 1409. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Legislation § 1409. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 687); in substance the same as Crim. Prac. Act, Stats. 1851, p. 280, § 604.

**Court in which trial is had may order its delivery.**

§ 1410. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

Legislation § 1410. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 688); in substance the same as Crim. Prac. Act, Stats. 1851, p. 280, § 605.

**If not claimed in six months to be delivered to county treasurer.**

§ 1411. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

Legislation § 1411. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 689); in substance the same as Crim. Prac. Act, Stats. 1851, p. 280, § 606.

**Receipt by officers for money, etc., taken from a person arrested for a public offense.**

§ 1412. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by a police-officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the clerk or other person in charge of the police-office in such city or town.

Legislation § 1412. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 690); based on Crim. Prac. Act, Stats. 1851, p. 280, which read: "§ 607. When money or such other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give public receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court, to which the depositions and statement must be sent, as provided by sections one hundred and seventy-six."

**Duties of persons having charge of police-offices in incorporated cities or towns.**

§ 1413. The clerk in, or person having charge of, the police-office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

Legislation § 1413. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 691.)

Record of property stolen or embezzled: See post, § 1536.



## CHAPTER XIII.

## Reprieves, Commutations, and Pardons.

- § 1417. Power of the governor to grant reprieves, commutations, and pardons.  
 § 1418. Governor's power in respect to convictions for treason.  
 § 1419. Governor to communicate to legislature reprieves, commutations, and pardons.  
 § 1420. Report of case, how and from whom required.  
 § 1421. Notice to district attorney of application for pardon.  
 § 1422. Publication of notice.  
 § 1423. When two preceding sections are not applicable.

Code commissioners' note to Chapter XIII. "This chapter is founded upon an act prescribing the manner of applying for pardons. (Stats. 1853, p. 270.) The provisions of an act to confer further powers upon the governor of this state, in relation to the pardon of criminals (Stats. 1863-64, p. 856), and of the act amendatory thereof (Stats. 1867-68, p. 111), and of an act authorizing the board of state prison directors to recommend the pardoning of convicts, etc. (Stats. 1867-68, p. 116), are intimately connected with the subject of prison discipline, and for that reason are, with considerable modification (for reasons there given) inserted in the part of this code relating to the state prison."

## Power of the governor to grant reprieves, commutations, and pardons.

§ 1417. The governor has power to grant reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter.

Legislation § 1417. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 692.)

Citations. Cal. 68/180.

Pardoning power: See Const., art. vii, § 1; U. S. Const., art. ii, § 2, subd. 1.

## Governor's power in respect to convictions for treason.

§ 1418. He may suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature at its next meeting, when the legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; provided, that neither the governor nor the legislature shall have power to grant pardons or commutations of sentence in any case where the convict has been twice convicted of felony, after the first day of Jan-

uary, eighteen hundred and eighty, unless upon the written recommendation of a majority of the judges of the supreme court.

**Legislation § 1418.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 693), and then read: "1418. He may suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the legislature, at its next meeting, when the legislature may either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve." 2. Amended by Code Amdts. 1880, p. 2.

**Citations.** Cal. 68/180.

**Governor to communicate to legislature reprieves, commutations, and pardons.**

§ 1419. He must, at the beginning of every session, communicate to the legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same.

**Legislation § 1419.** 1. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 694.) 2. Amended by Code Amdts. 1880, p. 3, inserting (1) "at the beginning of every session" after "He must," and (2) "and the reasons for granting the same" at end of section.

**Report of case, how and from whom required.**

§ 1420. When an application is made to the governor for a pardon, he may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

**Legislation § 1420.** Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 695.)

**Citations.** Cal. 68/180.

**Notice to district attorney of application for pardon.**

§ 1421. At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the governor.

**Legislation § 1421.** Enacted February 14, 1872.

**Publication of notice.**

§ 1422. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in a paper in the county in which the conviction was had.

Legislation § 1422. Enacted February 14, 1872.

**When two preceding sections are not applicable.**

§ 1423. The provisions of the two preceding sections are not applicable:

1. When there is imminent danger of the death of the person convicted or imprisoned;
2. When the term of imprisonment of the applicant is within ten days of its expiration.

Legislation § 1423. Enacted February 14, 1872.

## TITLE XI.

## Proceedings in Justices' and Police Courts and Appeals to Superior Courts.

Chapter I. Proceedings in Justices' and Police Courts. §§ 1425-1461.

II. Appeals to Superior Courts. §§ 1466-1470.

## CHAPTER I.

## Proceedings in Justices' and Police Courts.

- § 1425. Jurisdiction of justices' courts.
- § 1426. Proceedings must be commenced by complaint.
- § 1426a. Complaint for misdemeanor.
- § 1427. When warrant of arrest must issue. Form of warrant. In case of offense by corporation.
- § 1428. Minutes, how kept.
- § 1429. The plea, and how put in.
- § 1430. Issue, how tried.
- § 1431. Change of venue, when granted.
- § 1432. Upon change of venue, papers, etc., must be transmitted. Proceedings on change of venue.
- § 1433. Postponement of the trial.
- § 1434. Defendant to be present.
- § 1435. Jury trial, how waived.
- § 1436. Challenges.
- § 1437. Oath of jurors.
- § 1438. Trial, how conducted.
- § 1439. Court to decide questions of law, but not to charge in respect to matters of fact.
- § 1440. Jury may decide in court or retire. Oath of officer on their retirement.
- § 1441. Verdict of jury, how delivered and entered.
- § 1442. Verdict, when several defendants are tried together.
- § 1443. Jury, when to be discharged without a verdict.
- § 1444. If discharged, defendant may be tried again.
- § 1445. Rendering judgment.
- § 1446. Judgment, fine, and imprisonment.
- § 1447. Defendant, on acquittal, to be discharged. Order that prosecutor pay costs.
- § 1448. Judgment against prosecutor for costs.
- § 1449. Judgment, when to be rendered.
- § 1450. When defendant may move for a new trial or in arrest of judgment.

## 647 PROCEEDINGS IN JUSTICES' AND POLICE COURTS. § 1426

- § 1451. New trial, grounds of.
- § 1452. Grounds of motion in arrest of judgment.
- § 1458. Judgment to be entered in the minutes.
- § 1454. If judgment of acquittal or imposing a fine only, defendant to be discharged.
- § 1455. Judgment of imprisonment, how executed.
- § 1456. Judgment that defendant be imprisoned until he pay a fine, how executed.
- § 1457. Defendant discharged upon payment of fine. Disposition of fines.
- § 1458. Defendant may be admitted to bail.
- § 1459. Subpoenas.
- § 1460. Entitling affidavits.
- § 1461. "Police courts" defined.

### Jurisdiction of justices' courts.

§ 1425. The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. Petit larceny;
2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony;
3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

**Legislation § 1425.** 1. Addition by Stats. 1901, p. 498; unconstitutional; See note, § 5, ante. 2. Added by Stats. 1905, p. 705; the code commissioner saying, "This is a new section containing the matter now in § 115 of the Code of Civil Procedure."

Citations. Cal. 152/708.

### Proceedings must be commenced by complaint.

§ 1426. All proceedings and actions before a justice's or police court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

**Legislation § 1426.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 280, § 608, which (1) had "justice's, recorder's, or

mayor's court" instead of "justice's or police court," but (2) did not have the words "under oath" after "by complaint."

Citations. Cal. 54/409; 55/228; 60/105, 106; 65/615; 106/408; 109/450. App. 5/424, 426.

Police courts, organization, etc.: See Pol. Code, §§ 4424 et seq.

Justices' courts, organization, etc.: See Code Civ. Proc., §§ 85 et seq.

Police judge, provisions relating to: See Pol. Code, §§ 4424-4432.

Jurisdiction of police court over various offenses: See Pol. Code, §§ 4426, 4427.

#### Complaint for misdemeanor.

§ 1426a. A complaint for any misdemeanor triable in a justices' or police court must be filed within one year after its commission.

Legislation § 1426a. Added by Stats. 1909, p. 979.

#### When warrant of arrest must issue. Form of warrant. In case of offense by corporation.

§ 1427. If the justice of the peace, or police judge, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

"County of ———.

"The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

"Complaint upon oath having been this day made before me, ——— (justice of the peace or police judge, as the case may be), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above-named E. F. and bring him before me forthwith, at (naming the place).

"Witness my hand and seal at ———, this ——— day of ———, A. D.

"A. B."

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest need issue, but the justice of the peace or police judge must issue a summons substantially in the form prescribed in section thirteen hundred and ninety-one. Such summons must be served at the time and in the manner designated in section thirteen hundred and ninety-two. At the time named in the summons the corporation may appear by counsel and answer the com-

plaint. If it does not appear, a plea of not guilty must be entered, and the same proceedings had therein as in other cases.

**Legislation § 1427.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., §§ 150, 151); in substance the same as Crim. Prac. Act, Stats. 1851, p. 280, § 610. 2. Amendment by Stats. 1901, p. 499; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 706, (1) in introductory paragraph and in the form, changing "police justice" to "police judge"; (2) adding the final paragraph.

**Citations.** App. 4/722; 7/767.

**Arrest by peace-officer:** Ante, § 836.

**Arrest by private person:** Ante, § 837.

**Arrest by oral order of magistrate:** Ante, § 838.

**Duty of officer or person making arrest:** Ante, §§ 847, 848.

**Warrant of arrest, form of:** Ante, § 814.

**Warrant of arrest, issuance of:** See ante, § 818.

**Proceedings if corporation does not appear:** See ante, § 1896.

### **Minutes, how kept.**

§ 1428. A docket must be kept by the justice of the peace or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action and the proceedings of the court therein.

**Legislation § 1428.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 281, § 613, which read: "§ 613. A docket shall be kept by the justice, mayor, or recorder, or in the recorder's court, by the clerk of the court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein."

**Citations.** Cal. 55/228; 94/499.

**Plea to be entered in minutes:** See post, § 1429.

### **The plea, and how put in.**

§ 1429. The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney.

**Legislation § 1429.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 700); based on Crim. Prac. Act, § 611, as amended by Stats. 1860, p. 71, § 1, which read: "§ 611. On being arrested, the defendant may plead to the complaint or he may answer and deny the same. Such plea, answer, or denial, may be oral or in writing, and immediately thereafter the case shall be tried, unless, for good cause shown, an adjournment or change of venue shall be granted. If an adjournment or change of venue be granted, the defendant may be held to bail. If the defendant, at any time before the trial, apply for a change of the place of trial, and make it appear by affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the cause, by reason of prejudice or bias of such justice, the cause shall be transferred to another justice of the same or a neighboring township for trial. It shall be the duty of the justice ordering the change to require the defendant to appear before the justice to whom the transfer is made, on a day named for trial, also all witnesses, and to transmit to such justice a certified transcript of his docket, and all original papers in the cause. Should the defendant show to the satisfaction of the justice, by his own affidavit or otherwise, that he cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause shall be transferred to a justice of a neighboring township; provided, if it appear by the defendant's affidavit that the same prejudice exists in any other township or townships, the cause shall be transferred to some township where no such prejudice exists." When § 1429 was enacted in 1872, it was composed of the first two sentences, having, at end, "upon the minutes" instead of "in the minutes." 2. Amended by Code Amdts. 1873-74, p. 453, (1) in second sentence, changing "upon the minutes" to "in the minutes"; (2) adding the final sentence, which then ended with the words "by the grand jury." 3. Amended by Code Amdts. 1880, p. 30, adding "or any information which may be filed by the district attorney," at end of section.

Citations. Cal. 60/105.

Pleas: See ante, § 1016.

Plea of guilty, proceedings on: See post, § 1445.

### Issue, how tried.

§ 1430. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

**Legislation § 1430.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 701); based on Crim. Prac. Act, Stats. 1851, p. 281, §§ 611, (q.v., as amended by Stats. 1860, ante, Legislation § 1429,) 614, the latter section reading, "§ 614. The defendant shall be entitled, if demanded by him, to a jury trial. The formation of the juries is provided for by special statute." When enacted in 1872, § 1430 read: "1430. Upon a plea other than a plea of guilty, if the defendant does not demand a trial by jury, or an adjourn-



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ment or change of venue is not granted, the court must proceed to try the case." 2. Amended by Code Amdts. 1880, p. 5.

Citations. Cal. 92/576.

Jury trial, how waived: Post, § 1435.

**Change of venue, when granted.**

§ 1431. If the action or proceeding is in a justice's court, a change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or an adjoining township;

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of a township where the same prejudice does not exist.

Legislation § 1431. Enacted February 14, 1872; based on Crim. Prac. Act, § 611, as amended by Stats. 1860, p. 71, § 1, q.v., ante, Legislation § 1429.

Citations. Cal. 85/602; 119/402.

Change of venue: Ante, §§ 1083, 1084.

**Upon change of venue, papers, etc., must be transmitted. Proceedings on change of venue.**

§ 1432. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Legislation § 1432. Enacted February 14, 1872; based on Crim. Prac. Act, § 611, as amended by Stats. 1860, p. 71, § 1, q.v., ante, Legislation § 1429.

Transfer of records, etc., of the action: Ante, § 1086.

Duty of court on receipt of records: Ante, § 1088.

**Postponement of the trial.**

§ 1433. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

**Legislation § 1433.** Enacted February 14, 1872; based on Crim. Prac. Act, § 611, as amended by Stats. 1860, p. 71, § 1, q.v., ante, Legislation § 1429.  
**Citations.** Cal. 66/396.

### **Defendant to be present.**

§ 1434. The defendant must be personally present before the trial can proceed.

**Legislation § 1434.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 281, § 612, which read: "§ 612. The defendant must in all cases be personally present before the trial shall proceed."

**Presence of defendant, necessity of:** See ante, § 1043; post, § 1438.

**New trial where defendant was absent:** See post, § 1451.

### **Jury trial, how waived.**

§ 1435. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure.

**Legislation § 1435.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 281, § 614, which read: "§ 614. The defendant shall be entitled, if demanded by him, to a jury trial. The formation of the juries is provided for by special statute." When § 1435 was enacted in 1872, the first sentence read, "Before the court hears any testimony upon the trial, the defendant may demand a trial by jury," the second sentence reading as at present. 2. Amended by Code Amdts. 1880, p. 5.

**Citations.** Cal. 92/576.

**Constitutional provision.** "A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court. . . . In . . . cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court": Const. 1879, art. i, § 7.

**Waiver of jury:** See ante, § 1042.

### **Challenges.**

§ 1436. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court.

**Legislation § 1436.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 707); in substance the same as Crim. Prac. Act, Stats. 1851, p. 281, § 615.

**General causes of challenge:** Ante, § 1072.

**Particular causes of challenge:** Ante, § 1073.

Challenge to individual juror: Ante, § 1067.

Challenge to the panel of jurors: Ante, § 1058.

Number of peremptory challenges: Ante, § 1070.

#### Oath of jurors.

§ 1437. The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the people of the state of California and A. B., the defendant, and a true verdict render according to the evidence."

Legislation § 1437. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 711); in substance the same as Crim. Prac. Act, Stats. 1851, p. 281, § 616.

#### Trial, how conducted.

§ 1438. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Legislation § 1438. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 712); in exact language of Crim. Prac. Act, Stats. 1851, p. 281, § 617.

Conduct of the trial: Ante, § 1093.

New trial where defendant absent: See post, § 1451.

Presence of defendant, necessity of: See ante, §§ 1048, 1484.

#### Court to decide questions of law, but not to charge in respect to matters of fact.

§ 1439. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

Legislation § 1439. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 281, § 618.

Court to decide questions of law: See ante, §§ 1124-1127.

Duty of court in charging the jury: Ante, § 1127.

Questions of fact. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law: Const., art. vi, § 19.

In case of Nbel: Ante, §§ 251, 1125.

#### Jury may decide in court or retire. Oath of officer on their retirement.

§ 1440. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You

do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

**Legislation § 1440.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 713); based on Crim. Prac. Act, Stats. 1851, p. 281, § 619, the oath of which read, "You do swear that you will keep this jury together, in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when he [they] have so agreed."

**Deliberations of the jury:** Ante, § 1128.

**Oath and duty of officer having charge of jury:** See ante, §§ 1121, 1128.

#### **Verdict of jury, how delivered and entered.**

§ 1441. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter [it], or cause it to be entered, in the minutes.

**Legislation § 1441.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 714); in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, §§ 620, 621.

**Verdict, general and special:** Ante, § 1151.

#### **Verdict, when several defendants are tried together.**

§ 1442. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

**Legislation § 1442.** Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 622.

**Verdict as to one of several defendants, and new trial as to others:** Ante, § 1160.

#### **Jury, when to be discharged without a verdict.**

§ 1443. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Legislation § 1443. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 715); in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 623. Discharge of jury for sickness of juror: Ante, § 1189. Not to be discharged, unless no probability of agreement: Ante, § 1140.

**If discharged, defendant may be tried again.**

§ 1444. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

Legislation § 1444. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 716); in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 624. Retrial: Ante, § 1141.

**Rendering judgment.**

§ 1445. When the defendant pleads guilty, or is convicted, either by the court, or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

Legislation § 1445. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 717); based on Crim. Prac. Act, Stats. 1851, p. 282, § 625, which had the word "require" instead of "be" at end of section. 2. Amended by Code Amdts. 1873-74, p. 453, changing "fine and imprisonment" to "fine or imprisonment."

Citations. Cal. 60/435.

Plea of guilty, and proceedings on: See ante, § 1429.

**Judgment, fine, and imprisonment.**

§ 1446. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every dollar of the fine.

Legislation § 1446. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 718); based on Crim. Prac. Act, Stats. 1851, p. 282, § 626, which read, "§ 626. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be paid or satisfied"; also based on Stats. 1857, p. 151, § 2, which read, "Sec. 2. When a person shall be imprisoned for non-payment of a fine, or until a fine be paid, the imprisonment may extend to, but shall not exceed one day for every two dollars of the fine, and the costs that may be due from the person imprisoned, in the prosecution in which the fine was adjudged." 2. Amended by Code Amdts. 1873-74, p. 455, changing (1) "is satisfied" to "be satisfied," and (2) "every two dollars" to "every dollar." 3. Amendment by Stats. 1901, p. 499; unconstitutional: See note, § 5, ante.

Citations. Cal. 60/484, 485; 68/800; 65/156; 78/495; 80/208; 82/455; 84/166, 167; 85/38; 88/625, 626, 627, 629, 630; 89/478; 96/364, 365; 97/528, 529.

Imprisonment until fine paid: See ante, § 1205; post, § 1456.

**Defendant, on acquittal, to be discharged. Order that prosecutor pay costs.**

§ 1447. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

Legislation § 1447. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 719); in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 627.

Discharge on acquittal: See ante, § 1165; post, § 1454.

**Judgment against prosecutor for costs.**

§ 1448. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Legislation § 1448. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 720); in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 628.

**Judgment, when to be rendered.**

§ 1449. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment.

Legislation § 1449. 1. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 282, § 630. When enacted in 1872, § 1449 read: "1449. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed." 2. Amended by Code Amdts. 1878-74, p. 454.

Citations. Cal. 62/533; 68/491.

Time for rendition of judgment: See post, § 1453.

**When defendant may move for a new trial or in arrest of judgment.**

§ 1450. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

Legislation § 1450. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 283, § 681.

Motion in arrest of judgment: Ante, § 1185; post, § 1452.

Time to make motion in arrest of judgment: See ante, § 1185.

**New trial, grounds of.**

§ 1451. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had;

2. When the jury has received any evidence out of court;

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

Legislation § 1451. Enacted February 14, 1872; based on Crim. Prac. Act, § 682, as amended by Stats. 1863, p. 162, § 22, the introductory paragraph and subd. 1 of which read, "Section 682. A new trial can be granted only in the following cases: First—When the trial has been had in his absence; provided, if he shall voluntarily absent himself, with full knowledge that a trial is being had, a new trial shall not be granted on account of such voluntary absence"; the section thereafter proceeding as at present.

New trials: See ante, §§ 1179, 1182.

Presence of defendant necessary: See ante, §§ 1434, 1438.

Grounds for new trial in justice's or police court: See ante, § 1181.

**Grounds of motion in arrest of judgment.**

§ 1452. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Legislation § 1452. Enacted February 14, 1872; in exact language of Crim. Prac. Act, Stats. 1851, p. 283, § 633.

**Judgment to be entered in the minutes.**

§ 1453. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed and entered in the minutes of the court.

Legislation § 1453. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 283, § 634.

Judgment, rendition of: Ante, § 1445.

Time for rendition of judgment: See ante, § 1449.

**If judgment of acquittal or imposing a fine only, defendant to be discharged.**

§ 1454. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Legislation § 1454. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 283, § 635, which did not contain the words "without imprisonment for non-payment."

Discharge on acquittal: See ante, §§ 1165, 1447.

**Judgment of imprisonment, how executed.**

§ 1455. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for its execution.

Legislation § 1455. Enacted February 14, 1872; in substance the same as Crim. Prac. Act, Stats. 1851, p. 283, § 636.

Citations. App. 8/871.

Execution: See ante, §§ 1213, 1216.

Judgment of imprisonment, how executed: See ante, §§ 1215, 1216.

Imprisonment until payment of fine: See ante, §§ 1205, 1446.



**Judgment that defendant be imprisoned until he pay a fine, how executed.**

§ 1456. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

**Legislation § 1456.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 718); in substance the same as Crim. Prac. Act, Stats. 1851, p. 283, § 637. Citations. Cal. 54/206; 64/438; 82/455.

**Execution of judgment of fine or imprisonment:** Ante, § 1215.

**Defendant discharged upon payment of fine. Disposition of fines.**

§ 1457. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and pay over the fine within ten days to county treasurer if the offense is prosecuted for the violation of a state law in a justice's court; provided that all fines and forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof paid by the city, whether prosecuted for a violation of a state law or a city ordinance shall be paid to the city treasurer of the city in which such court is located; and further provided, that all fines and forfeitures collected for the violation of a city or town ordinance, in a justice's court shall be paid over to the city or town treasurer of the city or town in which such ordinance is in force, subject, however, to the provisions of chapter one of title fifteen of part one of this code.

**Legislation § 1457.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 283, §§ 638, 639, the former section having "justice's, or in a mayor's, or recorder's court," instead of "justice's or police court," as in the original code section. When enacted in 1872, § 1457 read: "1457. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offense is prosecuted in a justice's or police court. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section." 2. Amended by Stats. 1901, p. 88, to read: "1457. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and pay over the fine within ten days to the county or city treasurer, according as the offense is prosecuted for the violation of a state law or a city ordinance, whether in the justice's court or police court; provided,

that all forfeitures and fines collected for the violation of any city ordinance, whether in the police court or justice's court, shall be paid over to the city treasurer of the city in which such ordinance is in force. If a fine is imposed, and paid before commitment, it must be paid over as prescribed in this section." 3. Amended by Stats. 1905, p. 177.

Citations. Cal. 65/478; 88/411. App. 1/680, 681. Crim. Prac. Act: Cal. (§ 638) 45/246.

Disposition of fines: Post, § 1570.

Forfeitures, how disposed of: See post, § 1570.

#### **Defendant may be admitted to bail.**

§ 1458. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this code relative to bail are applicable to bail in justices' or police courts.

Legislation § 1458. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 786); based on Crim. Prac. Act, Stats. 1851, p. 288, § 640, which read: "§ 640. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the district court."

Bail: Ante, §§ 822, 1268 et seq.

#### **Subpoenas.**

§ 1459. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in section thirteen hundred and twenty-six, and punish disobedience thereof, as provided in section thirteen hundred and thirty-one.

Legislation § 1459. Enacted February 14, 1872. (N. Y. Code Crim. Proc., § 729.)

Witness must attend: Code Civ. Proc., § 2064.

#### **Entitling affidavits.**

§ 1460. The provisions of section fourteen hundred and one, in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter.

Legislation § 1460. Enacted February 14, 1872.

Erroneous title, or want of, effect of. See ante, § 1401; post, § 1563.

#### **"Police courts" defined.**

§ 1461. The term "police courts," as used in this and the succeeding chapter, includes police judges' courts, police courts, and all courts held by mayors or recorders in incorporated cities or towns.

Legislation § 1461. Enacted February 14, 1872.

Citations. Cal. 66/5; 88/410. App. 3/722.

## CHAPTER II.

## Appeals to Superior Courts.

- § 1466. Appeals, when allowed.
- § 1467. Within what time appeal may be taken.
- § 1468. Statement on appeal.
- § 1469. If new trial granted, in what court held.
- § 1470. Proceedings, if appeal is dismissed or judgment affirmed.

**Appeals, when allowed.**

§ 1466. Either party may appeal to the superior court of the county from a judgment of a justice's or police court, in like cases and for like cause as appeals may be taken to the supreme court.

**Legislation § 1466.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 265, § 481, which read: "§ 481. The party aggrieved in a criminal action, whether that party be the people or defendant, may appeal as follows: 1st. To the court of sessions of the county from a final judgment of a justice's, recorder's, or mayor's court. 2d. To the district court of the county from a final judgment of the court of sessions, or from an order granting or refusing a new trial in an action or proceeding commenced in the court of sessions, or which affects a substantial right in such action or proceeding. 8d. To the supreme court from a final judgment of the district court in all criminal cases amounting to felony, whether such judgment be rendered in an action or proceeding originally commenced in the district court, or transmitted from the court of sessions, or brought into the district court on appeal. Also, from an order of the district court granting or refusing a new trial, or which affects a substantial right in a criminal case, amounting to felony, commenced in the said district court." When enacted in 1872, § 1466 read: "1466. Either party may appeal to the county court of the county from a judgment of a justice's or police court, in like cases and for like cause as appeals may be taken to the supreme court; but no appeal can be taken from a judgment of the police judge's court of San Francisco, imposing a fine only of less than twenty dollars." 2. Amended by Code Amdts. 1880, p. 84.

**Citations.** Cal. 66/401; 82/615; 92/574.

**Appeal by defendant:** Ante, § 1287.

**Appeal by the people:** Ante, § 1288.

**Within what time appeal may be taken.**

§ 1467. The appeal may be taken, heard and determined as provided in title nine, part two of this code, except that such appeal must be taken within fifteen days after the judgment is rendered or within ten days after the order is made from which the appeal is taken.

**Legislation § 1467.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 265, § 482, which read: "§ 482. The appeal to the district court from the court of sessions, and to the supreme court from the district court, can be taken on questions of law alone." When enacted in 1872, § 1467 read: "1467. The appeal is taken, heard, and determined as provided in title nine, part two of this code." 2. Amended by Stats. 1907, p. 560; the code commissioner saying, "The amendment limits the time within which appeals from judgments and orders may be taken to the superior court in criminal cases."

**Citations.** Cal. 72/16; 82/615.

**Appeal, how taken:** Ante, § 1240.

**Judgment on appeal:** Ante, § 1258.

### **Statement on appeal.**

§ 1468. The appeal to the superior court from the judgment of a justice's or police court is heard upon a statement of the case settled by the justice or police judge, embodying such rulings of the court as are excepted to, which statement must be filed with and settled by the court within ten days after filing notice of appeal.

**Legislation § 1468.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, as amended and supplemented by Stats. 1858, p. 218, § 3, which read: "Sec. 3. The appeal to the county court from the judgment of a justice's, recorder's, mayor's, or police judge's court, shall be heard upon a statement of the case settled by the justice, police judge, recorder, or mayor, embodying the evidence, and such rulings of the court as are excepted to." 2. Amended by Code Amdts. 1880, p. 35, changing (1) "county court" to "superior court," and (2) "five days" to "ten days."

### **If new trial granted, in what court held.**

§ 1469. If a new trial is granted upon appeal, it must be had in the superior court.

**Legislation § 1469.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, as amended and supplemented by Stats. 1858, p. 218, § 4, which read: "Sec. 4. Upon the appeal to the county court, if a new trial be granted, such new trial shall be had in the county court. If the judgment be affirmed, a copy of the judgment of affirmance shall be sent to the court below, upon the receipt of which the court below shall proceed to enforce its sentence." When enacted in 1872, § 1469 read: "1469. If a new trial is granted upon appeal, it must be had in the county court, except the appeal is from the police judge's court of San Francisco, in which case a copy of the order granting a new trial must be remitted to that court, and the trial had therein." 2. Amended by Code Amdts. 1880, p. 35.

**Citations.** Cal. 72/15; 92/574.

**Proceedings, if appeal is dismissed or judgment affirmed.**

§ 1470. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence.

**Legislation § 1470.** Enacted February 14, 1872; based on Crim. Prac. Act, as amended and supplemented by Stats. 1858, p. 218, § 4; q.v., supra.  
**Legislation § 1469.**

**Citations.** Cal. 54/845; 101/304.

## TITLE XII.

## Special Proceedings of a Criminal Nature.

- Chapter I. Writ of Habeas Corpus. §§ 1473-1505.
- II. Coroners' Inquests and Duties of Coroners. §§ 1510-1520.
- III. Search-warrants. §§ 1523-1542.
- IV. Proceedings against Fugitives from Justice. §§ 1547-1558.
- V. Miscellaneous Provisions respecting Special Proceedings of a Criminal Nature. §§ 1562-1564.

## CHAPTER I.

## Writ of Habeas Corpus.

- § 1473. Who may prosecute writ.
- § 1474. Application for, how made.
- § 1475. How granted. Proceedings thereon. Application for writ must be verified; prior applications. Proof of service required before hearing.
- § 1476. Writ must be granted without delay. Admitted to bail pending determination.
- § 1477. Writ, what to contain.
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- § 1480. Return, what to contain.
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- § 1485. When court may discharge the party.
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#### Who may prosecute writ.

§ 1473. Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

**Legislation § 1473.** 1. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 834, § 1. 2. Amended by Code Amdts. 1873-74, p. 454, changing "unlawfully committed, detained, confined, or restrained" to "unlawfully imprisoned or restrained."

**Citations.** Cal. 126/616.

**Privilege of, not to be suspended.** The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension: Const. 1879, art. 1, § 5; U. S. Const., art. 1, § 9.

**Right to, where one detained as insane:** See Pol. Code, § 2188.

#### Application for, how made.

§ 1474. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known;
2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;
3. The petition must be verified by the oath or affirmation of the party making the application.

**Legislation § 1474.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 834, § 2.

**How granted. Proceedings thereon. Application for writ must be verified; prior applications. Proof of service required before hearing.**

§ 1475. The writ of habeas corpus may be granted in the manner provided by the constitution. If the writ has been granted by any

court or a judge or justice thereof, and after the hearing thereof the prisoner has been remanded, he shall not be discharged from custody by the same or any other court of like general jurisdiction, or by a judge or justice of the same or any other court of like general jurisdiction, unless upon some ground not existing in fact at the issuing of the prior writ. Should the prisoner desire to urge some point of law not raised in the petition for or at the hearing upon the return of the prior writ, then, in case such prior writ had been returned or returnable before a superior court or a judge thereof, no writ can be issued upon a second or other application except by the appropriate district court of appeal or some justice thereof, or by the supreme court or some judge thereof, and in such an event such writ must not be made returnable before any superior court or any judge thereof. In the event, however, that the prior writ was returned or made returnable before a district court of appeal or any justice thereof, no writ can be issued upon a second or other application except by the supreme court or some judge thereof, and such writ must be made returnable before said supreme court or some judge thereof. Every application for a writ of habeas corpus must be verified, and shall state whether any prior application or applications have been made for a writ in regard to the same detention or restraint complained of in the application, and if any such prior application or applications have been made the later application must contain a brief statement of all proceedings had therein, or in any of them, to and including the final order or orders made therein, or in any of them, on appeal or otherwise. Whenever the person applying for a writ of habeas corpus is held in custody or restraint by any officer of any court of this state or any political subdivision thereof or by any peace-officer of this state or any political subdivision thereof, a copy of the application for such writ must in all cases be served upon the district attorney of the county wherein such person is held in custody or restraint at least twenty-four hours before the time at which said writ is made returnable and no application for such writ can be heard without proof of such service in cases where such service is required.

**Legislation § 1475.** 1. Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 334, § 3, which read: "§ 3. Such writ of habeas corpus may be granted by the supreme court, or any judge thereof, or any district or county court in term time, or by any judge of such courts at any



time, whether in term or vacation." When enacted in 1872, § 1475 read: "1475. The writ of habeas corpus may be granted: 1. By the supreme court, or any justice thereof, upon petition on behalf of any person restrained of his liberty in this state. When so issued, it may be made returnable before the court or any justice thereof, or before any district or county court, or any judge thereof; 2. By the district courts, or a judge thereof, upon petition on behalf of any person restrained of his liberty in their respective districts; 3. By the county courts, or a judge thereof, upon petition on behalf of any person restrained of his liberty in their respective counties." 2. Amended by Code Amdts. 1880, p. 4, to read: "1475. The writ of habeas corpus may be granted: 1. By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court, or any justice thereof, or before any superior court or any judge thereof. 2. By the superior courts, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty in their respective counties." 3. Amendment by Stats. 1901, p. 499; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 706, in subd. 2, (1) changing "superior courts" to "superior court," and (2) adding a second sentence, which read, "If the writ has been granted by any superior court or judge, and after the hearing thereof the prisoner has been remanded, he shall not be discharged from custody by the same or any other superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ." 5. Amended by Stats. 1907, p. 560; the code commissioner saying, "The change in 1905 consisted in the addition of the last sentence in subd. 2. The purpose of the amendment was to prevent one who, after a hearing upon habeas corpus, had been remanded to custody, from applying thereafter to the same or another superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ. Certain abuses of the section still continuing in the practice, the whole section was recast in 1907 in the present drastic form."

Citations. Cal. 149/738; 151/518, 519. App. 2/728.

**Writ must be granted without delay. Admitted to bail pending determination.**

§ 1476. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay; and if the person by or upon whose behalf the application for the writ is made be detained upon a criminal charge, may admit him to bail, if the offense is bailable, pending the determination of the proceeding.

Legislation § 1476. 1. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 384, § 4. When enacted in 1872,

§ 1476 was composed of the first clause, ending with "without delay." 2. Amended by Stats. 1905, p. 476, adding the second clause, beginning "and if the person."

Citations. Cal. 154/169.

#### **Writ, what to contain.**

§ 1477. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified:

**Legislation § 1477.** Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 884, § 5, which read: "§ 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person so imprisoned or detained, as it is alleged by petition before the court or judge, as the case may be, at such time as the court or judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his detention, and have then [and] there such writ."

#### **How served.**

§ 1478. If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling-house or of the place where the party is confined or under restraint.

**Legislation § 1478.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 884, §§ 6, 7, 8.

Citations. Cal. 77/160.

#### **Proceedings upon disobedience to the writ.**

§ 1479. If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, must is-

sue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

**Legislation § 1479.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 835, § 9.

**Return, what to contain.**

§ 1480. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint;

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

**Legislation § 1480.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 835, § 10.

**Citations.** Cal. 71/288; 151/342.

**Body must be produced, when.**

§ 1481. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next section.

Legislation § 1481. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 335, § 11.

Citations. Cal. 154/169.

No fee to be charged for services in proceedings: See Pol. Code, § 4333.

#### When hearing may proceed without production of the body.

§ 1482. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Legislation § 1482. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 335, §§ 12, 13.

Citations. Cal. 154/169.

#### Hearing on return.

§ 1483. The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Legislation § 1483. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 335, § 14.

#### Proceedings on the hearing.

§ 1484. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

**Legislation § 1484.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 335, §§ 15, 16, 17.

**Citations.** Cal. 59/422; 92/190; 126/619. App. 2/386.

#### **When court may discharge the party.**

§ 1485. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or judge must discharge such party from the custody or restraint under which he is held.

**Legislation § 1485.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 335, § 18.

#### **When to remand party.**

§ 1486. The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

**Legislation § 1486.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 336, § 19.

**Citations.** Cal. 49/162; 89/427. App. 2/731.

**Court, when to remand:** See post, § 1492.

#### **Grounds of discharge in certain cases.**

§ 1487. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section:

1. When the jurisdiction of such court or officer has been exceeded;

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

3. When the process is defective in some matter of substance required by law, rendering such process void;

4. When the process, though proper in form, has been issued in a case not allowed by law;
5. When the person having the custody of the prisoner is not the person allowed by law to detain him;
6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law;
7. Where a party has been committed on a criminal charge without reasonable or probable cause.

**Legislation § 1487.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 336, § 20.

**Citations.** Cal. 64/156; 82/246, 247. App. 2/730, 731; (subd. 3) 1/69; (subd. 7) 5/154; 8/421.

**Not to be discharged for defect of form in warrant.**

§ 1488. If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

**Legislation § 1488.** Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 336, § 21, which had the words "warrant of commitment" instead of "warrant of commitment," in both instances.

**Citations.** Cal. 85/310; 92/426.

**Court may examine witnesses and discharge, hold to bail, or recommit.**

§ 1489. If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal.

**Legislation § 1489.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 336, § 22.

Citations. Cal. 49/437.

Imprisonment after discharge: See post, § 1496.

Bail on habeas corpus: See ante, § 1286; post, § 1491.

#### **Writ for purpose of bail.**

§ 1490. When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Legislation § 1490. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 386, § 28.

Citations. Cal. 54/108; 92/189.

#### **Judge may take bail.**

§ 1491. Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court.

Legislation § 1491. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 386, § 24.

Citations. Cal. 54/108; 92/189.

Bail on habeas corpus: See ante, §§ 1286, 1489.

#### **Judge, when to remand.**

§ 1492. If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is allowable, the court or judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

Legislation § 1492. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 386, § 25.

Citations. Cal. 54/108.

Court, when to remand: See ante, § 1486.

#### **Person in illegal, may be committed to legal, custody.**

§ 1493. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

**Legislation § 1493.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 336, § 26.  
**Citations.** Cal. 126/619; 128/81; 185/841.

**Disposition of party, pending proceedings on return.**

§ 1494. Until judgment is given on the return, the court or judge before whom any party may be brought on such writ may commit him to the custody of the sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

**Legislation § 1494.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 336, § 27.

**Defect of form in the writ immaterial, when.**

§ 1495. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

**Legislation § 1495.** Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 336, § 28, which had the word "dissolved" instead of "disobeyed."

**Imprisonment after discharge, in what cases permitted.**

§ 1496. No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process;
2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

**Legislation § 1496.** Enacted February 14, 1872; based on Habeas Corpus Act, § 29, as amended by Stats. 1854, Kerr ed. p. 20, Redding ed. p. 26, § 1; both the Kerr and the Redding edition having the words "issued pursuant to the provisions of this act" after "habeas corpus" in introductory paragraph, the Redding edition having the article "a" before "habeas corpus," the latter a peculiarity of the original Habeas Corpus Act,



which did not have the words "except in the following cases" at the end of that paragraph.

Citations. Cal. 64/156; 136/295. App. 2/730.

Imprisonment after discharge: See ante, § 1489.

**Warrant may issue instead of writ, in certain cases.**

§ 1497. When it appears to any court, or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court or judge, to be dealt with according to law.

Legislation § 1497. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 30.

**Warrant may include person charged with illegal detention.**

§ 1498. The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Legislation § 1498. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 31.

**Warrant, how executed.**

§ 1499. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

Legislation § 1499. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 32.

**Return and hearing on.**

§ 1500. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

**Legislation § 1500.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 38.

**Party may be discharged or remanded.**

§ 1501. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

**Legislation § 1501.** Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 337, § 34, which had the words "or left at liberty, as the case may require," at end of section.

**Writ and process may issue and be served at any time.**

§ 1502. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

**Legislation § 1502.** Enacted February 14, 1872; based on Habeas Corpus Act, Stats. 1850, p. 337, § 35, which read: "§ 35. Any writ or process authorized by this act, may be issued and served on the first day of the week, commonly called Sunday."

**By whom issued and when returnable.**

§ 1503. All writs, warrants, process, and subpoenas authorized by the provisions of this chapter must be issued by the clerk of the court, and, except subpoenas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

**Legislation § 1503.** Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 36.

**Where returnable.**

§ 1504. All such writs and process, when made returnable before a judge, must be returned before him at the county seat, and there heard and determined.

**Legislation § 1504.** 1. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 337, § 37. 2. Amended by Code Amdts. 1880, p. 4, changing "when issued by order of a judge" to "when made returnable before a judge."

**Citations.** Cal. 69/238.

**Damages, by whom recovered, for failure to issue or obey the writ.**

§ 1505. If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or

person to whom such writ may be directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any court of competent jurisdiction.

Legislation § 1505. Enacted February 14, 1872; in substance the same as Habeas Corpus Act, Stats. 1850, p. 837, § 38.

Citations. Cal. 79/81, 82.

## CHAPTER II.

### Coroners' Inquests and Duties of Coroners.

- § 1510. Coroner to summon jury to inquire into cause of death.
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- § 1518. Form of warrant.
- § 1519. How served.
- § 1520. District attorney may be present.

#### Coroner to summon jury to inquire into cause of death.

§ 1510. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death. No such person is exempt from jury duty except at the discretion of the coroner. No person shall be summoned as juror who is related to the decedent or is charged with or suspected of the killing, nor shall any one be summoned who is known to be prejudiced for or against him, but no person selected or summoned to appear as a juror is subject to be challenged by any party.

**Legislation § 1510.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 778); in substance the same as Coroner's Act, § 4, as amended by Stats. 1862, p. 552, § 1. When § 1510 was enacted in 1872, it was composed of the first sentence of the present section. 2. Amendment by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 707; the code commissioner saying, "The amendment consists [in the addition] of the last two sentences. The matter thus added to the sections is a codification of a part of the provisions of § 8 of the statute of 1871-72, p. 408, as amended by the statute of 1875-76, p. 397, respecting jurors summoned to act at coroners' inquests."

**Citations.** App. 8/461.

**Inquest:** See Pol. Code, §§ 4285-4290.

**Powers and duties of coroners:** See Pol. Code, §§ 4143-4148.

**Justice may act as coroner when:** See Pol. Code, § 4147.

**Costs of inquest in state prison:** See post, Appendix, tit. "Costs."

**Act providing for payment for chemical and post-mortem examinations:** See post, Appendix, tit. "Coroners."

**Act relating to appointment of physician at inquest:** See post, Appendix, tit. "Coroners."

**Act providing for attendance of physicians and surgeons:** See post, Appendix, tit. "Coroners."

**Coroners in San Francisco, act relating to:** See post, Appendix, tit. "Coroners."

**Acts furnishing assistants to coroners in certain cities:** See post, Appendix, tit. "Coroners."

**Act providing shorthand reporter at inquest:** See post, Appendix, tit. "Coroners."

### **Jurors to be sworn.**

§ 1511. When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

**Legislation § 1511.** Enacted February 14, 1872; based on Coroner's Act, Stats. 1850, p. 265, § 6, which had the words "evidence afforded" instead of "evidence offered."

### **Inquest.**

§ 1511a. There must be but one inquest upon a body, unless that taken is set aside by the court; and there must be but one inquest held upon several bodies of persons who were killed by the same

cause, and who died at the same time. Whenever it appears that an error in the identity of the body has been made by the jury, it is discretionary with the coroner to call another inquest without reference to the court, and a memorandum of the error must be entered upon the erroneous inquisition.

**Legislation § 1511a.** 1. Addition by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 707; the code commissioner saying, "This section is a codification of § 6 of the statute of 1871-72, p. 408, above referred to." See ante, Legislation § 1510.

#### **To view the body.**

§ 1511b. After the jury have been sworn and charged by the coroner, they must go together with the coroner to view and examine the body of the deceased person. They must not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body, they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time, as may be necessary.

**Legislation § 1511b.** 1. Addition by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 708; the code commissioner saying, "§ 7 of the statute last referred to is codified in this section." See ante, Legislation §§ 1510, 1511a.

#### **Witnesses.**

§ 1512. Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, or hold a post-mortem examination thereon, or a chemist to make an analysis of the stomach or the tissues of the body of the deceased, and give a professional opinion as to the cause of the death.

**Legislation § 1512.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 775); based on Coroner's Act, Stats. 1850, p. 265, § 7, the second sentence of which read, "He must summon and examine as witnesses, every person, who, in his opinion, or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body,

and give a professional opinion as to the cause of the death." 3. Amendment by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 708, adding, in second sentence, after "to inspect the body," "or hold a post-mortem examination thereon, or a chemist to make an analysis of the stomach or the tissues of the body of the deceased"; the code commissioner saying, "This provision is taken from §§ 1 and 2 of the statute of 1871-72, p. 403, above referred to." See Legislation §§ 1510, 1511a, 1511b.

#### **Witnesses compelled to attend.**

§ 1513. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

Legislation § 1513. 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 776); in exact language of Coroner's Act, Stats. 1850, p. 265, § 8. 2. Amended by Stats. 1905, p. 708, inserting "be" before "punished by the coroner."

Citations. Cal. 59/651; 122/688, 640.

#### **Verdict of jury in writing. What to contain.**

§ 1514. After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

Legislation § 1514. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 777); in substance the same as Coroner's Act, Stats. 1850, p. 265, § 9.

#### **Witness to be bound over, when. Recognizances.**

§ 1514a. If the jury find that a murder or manslaughter has been committed, the coroner may bind over the witnesses against the accused to appear and testify before the grand jury, or a magistrate, or the superior court, and to obey all orders of such magistrate or court in the premises. Such recognizance must be in writing and must be subscribed by the parties to be bound thereby, and made payable to the people of the state of California in an amount to be fixed by the coroner, and approved by a judge of the superior court; and in case of their refusal to sign such recognizance, the coroner has power to commit such witness as in the case of examination of an accused person by a magistrate.

**Legislation § 1514a.** 1. Addition by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 708; the code commissioner saying, "This is a codification of § 15 of the statute of 1871-72, p. 408, relating to coroners."

#### **Testimony in writing and where filed.**

§ 1515. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and forthwith filed by him, with the inquisition, and all recognizances taken by him, in the office of the county clerk.

**Legislation § 1515.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 778); based on Coroner's Act, Stats. 1850, p. 265, § 10, which had the words "district court" instead of "county court," as in original code section. When enacted in 1872, § 1515 read: "1515. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the county court of the county." 2. Amended by Code Amdts. 1880, p. 85, changing "county court" to "superior court." 3. Amendment by Stats. 1901, p. 500; unconstitutional: See note, § 5, ante. 4. Amended by Stats. 1905, p. 709, (1) adding, after "with the inquisition," the words "and all recognizances taken by him," and (2) changing "clerk of the superior court of the county" to "county clerk," at end of section.

**Citations.** Cal. 59/650, 651.

#### **Exception.**

§ 1516. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the superior court of the county.

**Legislation § 1516.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 779); based on Coroner's Act, Stats. 1850, p. 265, § 11, which had the words "district court" instead of "county court," as in original code section. 2. Amended by Code Amdts. 1880, p. 85, changing "county court" to "superior court."

#### **Coroner to issue warrant, when.**

§ 1517. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and

the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

**Legislation § 1517.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 780); in substance the same as Coroner's Act, Stats. 1850, p. 265, § 12.

#### **Form of warrant.**

§ 1518. The coroner's warrant must be in substantially the following form:

County of ———.

The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State:

An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the act of C. D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above-named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand this ——— day of ———, A. D. eighteen [nineteen] ———.  
E F, Coroner of the County of ———.

**Legislation § 1518.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 781); in substance the same as Coroner's Act, Stats. 1850, p. 265, § 13.

#### **How served.**

§ 1519. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county.

**Legislation § 1519.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 782); in substance the same as Coroner's Act, Stats. 1850, p. 265, § 14.

#### **District attorney may be present.**

§ 1520. The district attorney shall have the right to be present at any and all inquests held by the coroner when he has reason to believe a crime has been committed.

**Legislation § 1520.** Added by Stats. 1907, p. 666. In Stats. 1901, p. 501, the code commissioners added a section numbered 1520, entitled "Stenographic reporters for coroners, qualifications and duties of"; unconstitutional: See note, § 5, ante.



## CHAPTER III.

## Search-warrants.

- § 1523. Search-warrant defined.
- § 1524. Search-warrant, when may be issued.
- § 1525. It cannot be issued but upon probable cause, etc.
- § 1526. Magistrates must examine, on oath, complainant, etc.
- § 1527. Depositions, what to contain.
- § 1528. When to issue warrant.
- § 1529. Form of warrant.
- § 1580. By whom served.
- § 1531. Officer may break open door, etc., to execute warrant.
- § 1532. May break open door, etc., to liberate person acting in his aid.
- § 1533. When warrant may be served in the night.
- § 1534. Within what time warrant must be executed.
- § 1535. Officer to give receipt for property taken.
- § 1536. Property, how disposed of.
- § 1537. Return of warrant and delivery of inventory of property taken.
- § 1538. Copy of inventory, to whom delivered.
- § 1539. Proceedings, if grounds of warrant are controverted.
- § 1540. Property, when to be restored to person from whom it was taken.
- § 1541. Depositions, warrants, etc., to be returned to court.
- § 1542. When magistrate may direct defendant to be searched in his presence.

## Search-warrant defined.

§ 1523. A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace-officer, commanding him to search for personal property, and bring it before the magistrate.

Legislation § 1523. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 791); in substance the same as Crim. Prac. Act, Stats. 1851, p. 284, § 642. Citations. Cal. 68/288, 289.

Form of search-warrant: See post, §§ 1528, 1529.

## Search-warrant, when may be issued.

§ 1524. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.
2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is

concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

4. When the property is a cask, keg, bottle, vessel, siphon, can, case, or other package, bearing printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon the duly filed trade-mark or name of the person by whom, or in whose behalf, the search-warrant is applied for, in the possession of any person except the owner thereof, with intent to sell or traffic in the same, or refill the same with intent to defraud the owner thereof, with such intent, and without such owner's consent thereof, or unless the same shall have been purchased from the owner thereof; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have delivered it.

**Legislation § 1524.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 792); based on Crim. Prac. Act, Stats. 1851, p. 284, § 643, which read: "§ 643. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be." 2. Amended by Stats. 1899, p. 87, (1) in subd. 8, changing "the means of committing" to "a means of committing," and (2) adding subd. 4.

**Issuance of:** See post, § 1528.

**Form of search-warrant:** See ante, § 1523; post, § 1529.

**It cannot be issued but upon probable cause, etc.**

§ 1525. A search-warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

**Legislation § 1525.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 793); in substance the same as Crim. Prac. Act, Stats. 1851, p. 284, § 644.

**Magistrates must examine, on oath, complainant, etc.**

§ 1526. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

**Legislation § 1526.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 794); in exact language of Crim. Prac. Act, Stats. 1851, p. 284, § 645.  
**Citations.** Cal. 75/872.

**Depositions, what to contain.**

§ 1527. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

**Legislation § 1527.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 795); in exact language of Crim. Prac. Act, Stats. 1851, p. 284, § 646.  
**Citations.** Cal. 75/872.

**When to issue warrant.**

§ 1528. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace-officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

**Legislation § 1528.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 796); in substance the same as Crim. Prac. Act, Stats. 1851, p. 284, § 647.

**Form of warrant.**

§ 1529. The warrant must be in substantially the following form:  
County of ———.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in the County of ———:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to section fifteen hundred and twenty-five, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to sec-

tion fifteen hundred and thirty-three), to make immediate search on the person of C. D. (or in the house situated —, describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place).

Given under my hand, and dated this — day of —, A. D. eighteen [nineteen] —.

E. F., Justice of the Peace (or as the case may be).

**Legislation § 1529.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 797); in substance the same as Crim. Prac. Act, Stats. 1851, p. 284, § 648.  
**Citations.** Cal. 68/289.

**Search-warrant, form of:** See ante, §§ 1523, 1528.

#### **By whom served.**

§ 1530. A search-warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

**Legislation § 1530.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 798); in exact language of Crim. Prac. Act, Stats. 1851, p. 285, § 649.

#### **Officer may break open door, etc., to execute warrant.**

§ 1531. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

**Legislation § 1531.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 799); in substance the same as Crim. Prac. Act, Stats. 1851, p. 285, § 650.

#### **May break open door, etc., to liberate person acting in his aid.**

§ 1532. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

**Legislation § 1532.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 800); in exact language of Crim. Prac. Act, Stats. 1851, p. 285, § 651.

#### **When warrant may be served in the night.**

§ 1533. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the

property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

**Legislation § 1533.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 801); in substance the same as Crim. Prac. Act, Stats. 1851, p. 285, § 652.

#### **Within what time warrant must be executed.**

§ 1534. A search-warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

**Legislation § 1534.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 802); based on Crim. Prac. Act, Stats. 1851, p. 285, § 653, which read: "§ 653. A search-warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void."

#### **Officer to give receipt for property taken.**

§ 1535. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

**Legislation § 1535.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 803); in substance the same as Crim. Prac. Act, Stats. 1851, p. 285, § 654.

#### **Property, how disposed of.**

§ 1536. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, or if it was taken on a warrant issued on the grounds stated in the fourth subdivision of section fifteen hundred and twenty-four of this code, dispose of it as provided in sections fourteen hundred and eight and fourteen hundred and thirteen, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section fifteen hundred and twenty-four, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

**Legislation § 1536.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 804); based on Crim. Prac. Act, Stats. 1851, p. 285, § 655, which

read: " § 655. When the property is delivered to the magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections six hundred and three to six hundred and seven, both inclusive." 2. Amended by Stats. 1903, p. 81, in first sentence, after "stolen or embezzled," adding "or if it was taken on a warrant issued on the grounds stated in the fourth subdivision of section fifteen hundred and twenty-four of this code."

Citations. Cal. 68/289; 75/372.

#### **Return of warrant and delivery of inventory of property taken.**

§ 1537. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Legislation § 1537. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 805); in substance the same as Crim. Prac. Act, Stats., 1851, p. 285, § 656.

#### **Copy of inventory, to whom delivered.**

§ 1538. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Legislation § 1538. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 806); in substance the same as Crim. Prac. Act, Stats. 1851, p. 285, § 657.

#### **Proceedings, if grounds of warrant are controverted.**

§ 1539. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine.

Legislation § 1539. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 807); based on Crim. Prac. Act, Stats. 1851, p. 285, §§ 658, 659, the former section being identical with the first clause of the code section, and § 659 reading, " § 659. The testimony given by each witness must be reduced to writing, and certified by the magistrate."

**Property, when to be restored to person from whom it was taken.**

§ 1540. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

**Legislation § 1540.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 809); in substance the same as Crim. Prac. Act, Stats. 1851, p. 285, § 660.

**Depositions, warrants, etc., to be returned to court.**

§ 1541. The magistrate must annex the depositions, the search-warrant and return, and the inventory, and if he has not power to inquire into the offense in respect to which the warrant was issued, he must at once file it and such depositions and return with the clerk of the court having power to so inquire.

**Legislation § 1541.** 1. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 810); in substance the same as Crim. Prac. Act, Stats. 1851, p. 286, § 661, which had "court of sessions" instead of "county court," as in original code section. When enacted in 1872, § 1541 read: "1541. The magistrate must annex together the depositions, the search-warrant and return, and the inventory, and return them to the next term of the county court having power to inquire into the offenses in respect to which the search-warrant was issued, at or before its opening on the first day." 2. Amendment by Stats. 1901, p. 501; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 709.

**Citations.** Cal. 75/372.

**When magistrate may direct defendant to be searched in his presence.**

§ 1542. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

**Legislation § 1542.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 813); in substance the same as Crim. Prac. Act, Stats. 1851, p. 286, § 664.

**Citations.** Cal. 68/286.

**Pen. Code—44**

## CHAPTER IV.

## Proceedings against Fugitives from Justice.

- § 1547. Rewards for the apprehension of fugitives from justice.
- § 1548. Fugitives from another state, when to be delivered up.
- § 1549. Magistrate to issue warrant.
- § 1550. Proceedings for the arrest and commitment of the person charged.
- § 1551. When and for what time to be committed.
- § 1552. His admission to bail.
- § 1553. Magistrate must notify district attorney of the arrest.
- § 1554. Duty of the district attorney.
- § 1555. Person arrested, when to be discharged.
- § 1556. Magistrate to return his proceedings to superior court.
- § 1557. Fugitives from this state. Accounts of persons employed in procuring surrender to be paid out of the state treasury.
- § 1558. No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.

## Rewards for the apprehension of fugitives from justice.

§ 1547. The governor may offer a reward not exceeding one thousand dollars (\$1000.) payable out of the general fund, for the apprehension—

1. Of any convict who has escaped from the state's prison;
2. Of any person who has committed, or is charged with the commission of an offense punishable with death;
3. For the arrest of each person engaged in the robbery of, or any attempt to rob any person or persons upon or having in charge in whole or in part any stage-coach, wagon, railroad train or other conveyance engaged at the time in carrying passengers or any private conveyance within this state.

The reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested.

Legislation § 1547. 1. Enacted February 14, 1872; based on Stats. 1851, p. 443, § 1, which read: "§ 1. If any person who has been sentenced to confinement in the state penitentiary by any court having competent authority within this state, shall escape therefrom, or if any person shall commit treason against the state, or shall be charged with murder or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or their apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the general fund." When enacted in 1872, § 1547 read: "1547. The governor may offer a reward, not exceeding one thousand dol-



lars, payable out of the general fund, for the apprehension: 1. Of any convict who has escaped from the state prison; or, 2. Of any person who has committed, or is charged with the commission of, an offense punishable with death." 2. Amended by Stats. 1905, p. 223, the final paragraph of the section as amended containing a repealing clause, reading, "An act entitled an act imposing certain duties upon the governor of the state, approved April 3, 1876, is hereby repealed."

Citations. Cal. 120/265.

#### **Fugitives from another state, when to be delivered up.**

§ 1548. A person charged in any state of the United States with treason, felony, or other crime, who flees from justice and is found in this state, must, on demand of the executive authority of the state from which he fled, be delivered up by the governor of this state, to be removed to the state having jurisdiction of the crime.

Legislation § 1548. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 286, § 665, which had the words "or territory" after "state" in the first and third instances.

Citations. Cal. 49/434.

Delivered, to whom. U. S. Rev. Stats., § 5278, provides that after the demand, above referred to, has been made upon the executive of a state, it shall be his duty "to cause him," the fugitive, "to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

Evidence of the charge. The evidence required that a person whose delivery is demanded has been charged with the commission of a crime, is "a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person with having committed" the particular crime therein set forth. This copy must be "certified as authentic by the governor, or other chief magistrate, of the state or territory from whence the person so charged has fled": U. S. Rev. Stats., § 5278.

#### **Magistrate to issue warrant.**

§ 1549. A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this state.

Legislation § 1549. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 828); in substance the same as Crim. Prac. Act, Stats. 1851, p. 286, § 666.

Citations. Cal. 49/434.

#### **Proceedings for the arrest and commitment of the person charged.**

§ 1550. The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this code

for the arrest and commitment of a person charged with a public offense committed in this state, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the state in which he is charged to have committed the offense, may be received as evidence before the magistrate.

**Legislation § 1550.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 829); based on Crim. Prac. Act, Stats. 1851, p. 286, § 667, which had the words "or territory" after "state" in second instance.

**Citations.** Cal. 49/487.

#### **When and for what time to be committed.**

§ 1551. If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

**Legislation § 1551.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 830); based on Crim. Prac. Act, Stats. 1851, p. 286, § 668, which read: "§ 668. If from the examination it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state or territory in which he committed the offense, unless he give bail as provided in the next section, or until he be legally discharged."

#### **His admission to bail.**

§ 1552. The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this state.

**Legislation § 1552.** Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 831); in substance the same as Crim. Prac. Act, Stats. 1851, p. 287, § 669.

**Magistrate must notify district attorney of the arrest.**

§ 1553. Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

Legislation § 1553. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 882); in substance the same as Crim. Prac. Act, Stats. 1851, p. 287, § 670.

**Duty of the district attorney.**

§ 1554. The district attorney must immediately thereafter give notice to the executive authority of the state, or to the prosecuting attorney or presiding judge of the court of the city or county within the state having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Legislation § 1554. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 883); based on Crim. Prac. Act, Stats. 1851, p. 287, § 671, which had (1) the words "or territory" after "state" in both instances, and (2) the word "criminal" before "court."

**Person arrested, when to be discharged.**

§ 1555. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this state.

Legislation § 1555. Enacted February 14, 1872 (N. Y. Code Crim. Proc., § 884); in substance the same as Crim. Prac. Act, Stats. 1851, p. 287, § 672.

**Magistrate to return his proceedings to superior court.**

§ 1556. The magistrate must return his proceedings to the superior court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Legislation § 1556. 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 287, § 673, which had the words "court of sessions" instead of "county court," as in original code section. 2. Amended by Code

Amdts. 1880, p. 35, changing (1) "next county court" to "superior court," (2) "time for his arrest" to "time of his arrest," and (3) "time to be specified" to "time specified."

**Fugitives from this state. Accounts of persons employed in procuring surrender to be paid out of the state treasury.**

§ 1557. When the governor of this state, in the exercise of the authority conferred by section two, article four of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

Legislation § 1557. Enacted February 14, 1872; based on Crim. Prac. Act, § 674, as amended by Stats. 1854, Kerr ed. p. 169, Redding ed. p. 80, § 1, which read: "§ 674. When the governor of this state, in the exercise of the authority conferred by section two, article four, of the constitution of the United States, or by the laws of this state, shall demand from the executive authority of any state or territory of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who shall be found and arrested in such state, territory or foreign government, the accounts of the person employed by him to bring back such fugitive shall be audited by the comptroller, and paid out of the state treasury."

**No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.**

§ 1558. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this state, or detaining him therein, except as provided for in such section.

Legislation § 1558. Enacted February 14, 1872.

## CHAPTER V.

**Miscellaneous Provisions respecting Special Proceedings of a Criminal Nature.**

§ 1562. Parties to special proceedings, how designated.

§ 1563. Entitling affidavits.

§ 1564. Subpoenas.

**Parties to special proceedings, how designated.**

§ 1562. The party prosecuting a special proceeding of a criminal nature is designated in this code as the complainant, and the adverse party as the defendant.

Legislation § 1562. Enacted February 14, 1872.

**Entitling affidavits.**

§ 1563. The provisions of section fourteen hundred and one, in respect to entitling affidavits, are applicable to such proceedings.

Legislation § 1563. Enacted February 14, 1872.

Erroneous title or want of title, effect of: See ante, §§ 1401, 1460.

**Subpoenas.**

§ 1564. The courts and magistrates before whom such proceedings are prosecuted may issue subpoenas for witnesses, and punish their disobedience in the same manner as in a criminal action.

Legislation § 1564. Enacted February 14, 1872.

## TITLE XIII.

**Proceedings for Bringing Persons Imprisoned in the State Prison, or the Jail of Another County, before a Court.**

§ 1567. Persons imprisoned in the state prison or the jail of another county, how brought before a court.

Persons imprisoned in the state prison or the jail of another county, how brought before a court.

§ 1567. When it is necessary to have a person imprisoned in the state prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

**Legislation § 1567.** Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 289, § 683, which read: "§ 683. When it is necessary for any purpose to have a person who is in prison in any part of the state brought before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the sheriff of the county where it is made."

**Citations.** Cal. 82/458, 461, 467, 468; 92/486, 491; 135/842.

**Deposition of prisoner, when and how taken:** See ante, § 1833.

**Prisoner as witness, proceedings on bringing in:** See ante, § 1833.

## TITLE XIV.

## Disposition of Fines and Forfeitures.

## § 1570. Fines and forfeitures, how disposed of.

**Fines and forfeitures, how disposed of.**

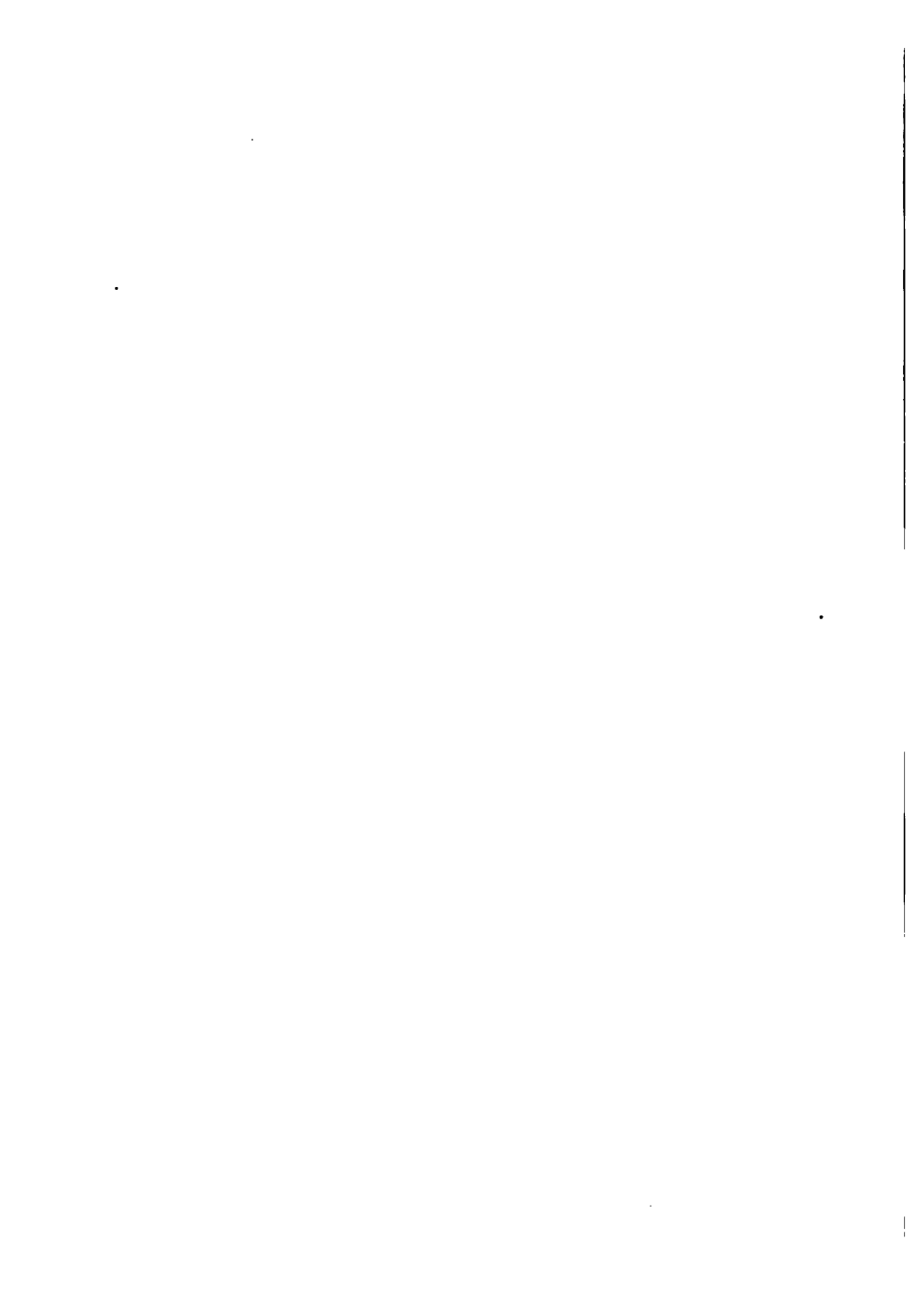
§ 1570. All fines and forfeitures collected in any court, except police courts and city justices courts, must be paid to the county treasurer of the county in which the court is held; provided, that all forfeitures and fines collected in any court, for the violation of any city or town ordinance shall be paid to the city or town treasurer of the city or town in which such ordinance is in force; and further provided, that all fines and forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof, paid by the city, shall be paid to the city treasurer of the city in which such court is located, subject, however, to the provisions of chapter one of title fifteen of part one of this code.

**Legislation § 1570.** 1. Enacted February 14, 1872; based on Crim. Prac. Act, Stats. 1851, p. 288, § 679, which had the words "of this state" after "in any court." When enacted in 1872, § 1570 read: "1570. All fines and forfeitures collected in any court, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held." 2. Amended by Code Amdts. 1873-74, p. 454, inserting "except police courts" after "in any court." 3. Amended by Stats. 1901, p. 88, to read: "1570. All fines and forfeitures collected in any court must be paid to the county treasurer of the county in which the court is held; provided, that all forfeitures and fines collected in any court for the violation of any city ordinance shall be paid to the city treasurer of the city in which such ordinance is in force." 4. Amended by Stats. 1905, p. 176.

**Citations.** Cal. 65/478; 88/411, 412. App. 1/680, 681. Crim. Prac. Act: Cal. (§ 679) 45/246.

**Fines, how disposed of:** See ante, § 1457.

**Forfeitures, how disposed of:** See ante, § 1457.





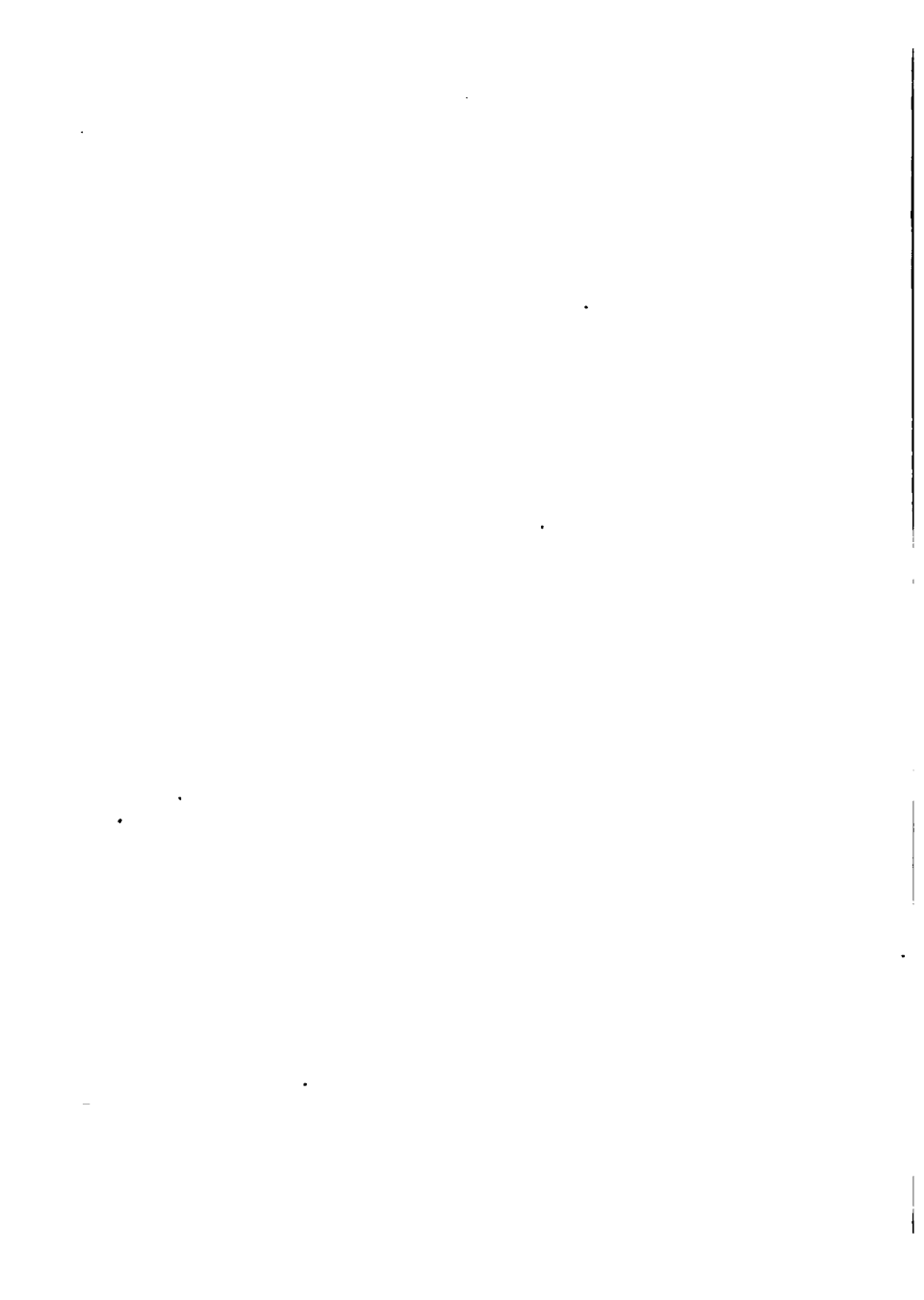
## **PART III.**

### **THE STATE PRISONS AND COUNTY JAILS.**

**TITLE I. STATE PRISONS. §§ 1572-1596.**

**II. COUNTY JAILS. §§ 1597-1615.**

**(699)**



**TITLE I.**  
**State Prisons.**

- § 1572. Names of state prisons.
- § 1573. Directors, how appointed.
- § 1574. President of board, election and duties of.
- § 1575. Quorum.
- § 1576. Directors, duties of.
- § 1577. Wardens, appointment of, and term of office.
- § 1578. Wardens, duties of.
- § 1579. Prisoners, release and restoration of, to citizenship.
- § 1580. Clerks, appointment and duties of.
- § 1581. Removal of wardens, clerks, etc.
- § 1582. Wardens and clerks, salaries, etc.
- § 1583. Contracts.
- § 1584. Moneys collected by wardens, disposition of.
- § 1585. Moneys collected by wardens, receipts to be given for.
- § 1586. Convicts, employment of.
- § 1587. Prisoners, treatment of.
- § 1588. Prisoners, credits of.
- § 1589. Prisoners, United States.
- § 1590. Directors, powers of.
- § 1591. Officers and employees, not to receive other compensation than that allowed by directors.
- § 1592. Officers and employees, not to make or receive gifts, etc.
- § 1593. Annual reports.
- § 1594. Bonds of officers and employees.
- § 1595. Rebuilding of buildings destroyed by fire.
- § 1596. Reports.

Legislation Title I. 1. Enacted February 14, 1872, and then consisted of Chapter I, §§ 1573-1586, and Chapter II, §§ 1590-1595; the code commissioners saying of Chapter I, that it was "based upon the following statutes: Stats. 1858, p. 259, §§ 4, 5, 9-12; Stats. 1860, p. 341, § 1; Stats. 1863-64, p. 24, § 1; Stats. 1867-68, p. 141, § 1," and of Chapter II, that it "embraces the provisions of an act to confer further powers upon the governor of this state in relation to the pardon of criminals, approved April 4, 1864 (Stats. 1863-64, p. 356); an act to amend above-cited act, approved March 7, 1868 (Stats. 1867-68, p. 111); an act to amend above-cited act, approved March 30, 1868 (Stats. 1867-68, p. 675); and an act to authorize the board of state prison directors to recommend the pardon of convicts in the state prison, approved March 9, 1868 (Stats. 1867-68, p. 116)." 2. Repeal of the sections composing the title by Stats. 1901, p. 502 (unconstitutional: See note § 5, ante); the code commissioners saying of the sections, "They ap-

ply to the government of the state prisons, and have been completely supplanted by the present constitution and the statutes adopted in pursuance thereof." 3. Repealed by Stats. 1905, p. 645, the repealing section reading, "Section 1. Title I of Part III of the Penal Code and each and every section thereof are hereby repealed," and the code commissioner saying (enumerating the sections composing the title), "These sections, which then comprised Title I of Part III of the Penal Code, with the exception of the last sentence of § 1598, had been completely superseded by the constitution of 1879 and the general statutes in pursuance thereof. The portion of § 1598 which was then still in force was at the same session incorporated into an act to amend the statute of 1889, p. 404 (1905: 520), concerning the state prisons, so that it was preserved, notwithstanding the repeal of these superseded and therefore useless provisions. In 1907 the act of March 19, 1889 (Stats. 1889, p. 404), and the act of 1905 (Stats. 1905, p. 520), were codified in the new §§ 1572-1596, inclusive." 4. The present Title I added by Stats. 1907, p. 584, the title of the act reading, "An Act to add a new title to Part III of the Penal Code, to be known as Title I thereof, relating to the government and management of the state prisons."

Synopsis original code Title I. Title I. Of the State Prison and the Discharge of Prisoners therefrom before their Term of Service Expires. Chapter I. Of the State Prison. II. Of the Discharge of Prisoners before the Expiration of their Term of Service.

Chapter I. Of the State Prison. § 1578. Under the charge and control of a board of directors (cited in 103 Cal. 235). § 1574. President pro tem. of senate, when to act as director, etc. § 1575. Compensation of directors. § 1576. Board must adopt rules and regulations. § 1577. Board may appoint warden and other officers. § 1578. Duties of clerk and other officers. § 1579. Monthly reports of officers. § 1580. Board must keep account of the funds received, etc., and report to the governor. § 1581. Persons convicted of offenses against the United States to be received in the prison. § 1582. Disposition of insane prisoners. § 1583. State prison fund. § 1584. State prison fund, how disbursed. § 1585. Board cannot contract debts. § 1586. Compensation of sheriffs for transportation of convicts (amended by Code Amdts. 1880, p. 31; section cited in 50 Cal. 119; 77 Cal. 595). § 1587. Contract to be given at public letting (added by Code Amdts. 1879-74, p. 467).

Chapter II. Of the Discharge of Prisoners before the Expiration of their Term of Service. § 1590. Credits for good behavior, how and when allowed (amended by Code Amdts. 1877-78, p. 124; section cited in 76 Cal. 516; 145 Cal. 187; 145 Cal. 188). § 1591. Credits, when forfeited. § 1592. Board to make rules and regulations to carry the provisions of this chapter into effect. § 1593. Board, when to report credits to governor. § 1594. Further powers of the board. § 1595. Board must report to the legislature prisoners whom they think should be pardoned. Governor may pardon if legislature recommend.

**Names of state prisons.**

§ 1572. The state prisons of this state shall be known as the state prison at San Quentin, which is situated in the county of Marin, and which shall have an official staff conforming to the laws of the state in relation to state prisons; and the state prison at Folsom, which is situated in the county of Sacramento, and which shall have a similar staff and be similarly organized, and all the finances and accounts of the two prisons shall be kept separate and apart from each other.

**Legislation § 1572.** 1. Added by Stats. 1907, p. 585. 2. Amended by Stats. 1909, p. 427, (1) inserting (1) "which is situated in the county of Marin, and" after "San Quentin," and (2) "which is situated in the county of Sacramento, and" after "Folsom." See ante, Legislation Title I, for code commissioner's note, etc.

**State prisons, acts relating to:** See post, Appendix, tit. "State Prisons."

**School of industry at Ione, acts relating to:** See post, Appendix, tit. "School of Industry."

**School of reform at Whittier, acts relating to:** See post, Appendix, tit. "School of Reform."

**Directors, how appointed.**

§ 1573. For the government and management of the state prisons there shall be appointed by the governor, by and under the advice of the senate, five directors, who shall hold their office for the term of ten years, from and after the date of such appointment; such appointments to be made as vacancies occur in the board. In case of death or resignation of a director his successor shall be appointed to fill the unexpired term of such director by the governor, by and with the advice of the senate. Each director shall subscribe an oath of office, which shall be indorsed on his commission, within ten days after receiving written notice of such appointment, and a duplicate of such oath shall also be filed with the secretary of state.

**Legislation § 1573.** Added by Stats. 1907, p. 585. See ante, Legislation Title I, for original code title, section, etc.

**Citations.** Cal. 103/225.

**President of board, election and duties of.**

§ 1574. The board of directors shall annually elect one of their members president of the board, whose duty it shall be to preside at the meetings of the board and to perform such other duties as may from time to time be prescribed by the rules and regulations for the

government of the board, and the clerk of said board of directors shall immediately notify the governor in writing of such election.

Legislation § 1574. 1. Added by Stats. 1907, p. 585. 2. Amended by Stats. 1909, p. 487, (1) changing "meeting" to "meetings" after "preside at the"; (2) adding at end of section, "and the clerk of said board of directors shall immediately notify the governor in writing of such election." See ante, Legislation Title I, for original code title, section, etc.

#### Quorum.

§ 1575. Three members of the board shall constitute a quorum for the transaction of all business, but no order of the board shall be valid unless concurred in by three or more members.

Legislation § 1575. Added by Stats. 1907, p. 585. See ante, Legislation Title I, for original code title, section, etc.

#### Directors, duties of.

§ 1576. It shall be the duty of the directors [First] to determine the necessary officers and employees of the prisons other than those of the wardens and clerks, specifying their duties severally, and fixing their salaries; to prescribe rules and regulations for the government of the prisons, and to revise and change the same from time to time as circumstances may require, and to board and lodge the officers and employees, or allow them a money commutation in lieu thereof; provided, the warden may make temporary rules, in cases of emergency, to remain in force until the succeeding meeting of the board. At least three of the directors shall visit the prisons once in each month, and oftener if necessary, at such time as they may select. The directors shall audit all claims for supplies, services, and expenses of officers and employees, and all other demands against the prison.

Second. To enter or cause to be entered on their journal by the clerks all official acts which shall be signed by at least three members of the board.

Third. On or before the first day of December of each year to report to the governor the condition of the prisons, together with detailed statements of receipts and expenditures, and such suggestions concerning the prisoners as may appear to be necessary and expedient.

Fourth. The board of directors shall also adopt rules and regulations not inconsistent with the constitution and the laws of the state

of California for the government of the board, and may change the same at their pleasure.

Fifth. The board of directors shall have power to establish an office in San Francisco, and employ a secretary.

Legislation § 1578. Added by Stats. 1907, p. 588. See ante, Legislation Title I, for original code title, section, etc.

#### **Wardens, appointment of, and term of office.**

§ 1577. The board of directors shall, within thirty days after this act becomes effective, appoint a warden for each prison, who shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office, as prescribed by law and by the rules and regulations of the board of directors, and shall enter into a bond to the state of California, in the sum of twenty-five thousand dollars, with two or more sufficient sureties, said bond to be approved by the board of directors, the governor, and the attorney-general of the state, conditioned to the faithful performance of such duties as such officer aforesaid. Each warden shall hold his office for a term of four years from and after the date of the appointment made in compliance with the provisions of this section, and his compensation shall be fixed at the time of his appointment in conformity with the provisions of section fifteen hundred and eighty-two of the Penal Code.

Legislation § 1577. 1. Added by Stats. 1907, p. 588. 2. Amended by Stats. 1909, p. 586, (1) in first sentence, (a) adding, after "The board of directors shall," the words "within thirty days after this act becomes effective," (b) changing "to enter into" to "shall enter into," (c) adding "said bond" before "to be approved," (d) adding "the governor" after "board of directors," and (e) omitting from end of sentence the words (which were the final words of the section as added in 1907) "and he shall hold his office four years after such appointment"; (2) adding the final sentence. See ante Legislation Title I, for original code title, section, etc.

#### **Wardens, duties of.**

§ 1578. The warden shall reside at the state prisons to which they are respectively assigned in houses provided and furnished at the expense of the state, as may be ordered by the board of directors, and it shall be their duty:

First. To fill all subordinate positions that may be created by order of the board of directors by appointment of suitable persons thereto.

Second. Under the order and direction of the board to prosecute

all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the prisons and their management, such suits to be prosecuted in the name of the board of state prison directors.

Third. To supervise the government, discipline, and police of the prisons, and to enforce all orders and regulations of the board in respect to such prisons. A registry of convicts shall be kept by them respectively, in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, at what institution and under what system, an accurate description of his person, and whether he has been previously confined in a state prison in this or any other state, and if so, when and how he was discharged.

Fourth. To report to the governor before the twentieth of each month the names of all prisoners whose terms are about to expire, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence.

Fifth. To grade and classify the prisoners in accordance with the rules and regulations of the board of directors, now existing or which may hereafter be made, and to provide for clothing them in such manner that the different grades or classes may be readily distinguished.

Sixth. To perform such other duties as may be prescribed by the board of directors.

**Legislation § 1578.** 1. Added by Stats. 1907, p. 586. 2. Amended by Stats. 1909, (1) in introductory paragraph, changing "The wardens" to "The warden" (undoubtedly a typographical error); (2) adding the present subd. Fifth, and subd. Fifth of the 1907 section renumbered subd. Sixth. See ante, Legislation Title I, for original code title, section, etc.

#### **Prisoners, release and restoration of, to citizenship.**

§ 1579. The governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order under his hand, addressed to the warden of the prison in which he has been confined, in such mode and form as he may deem proper, and



with or without restoration to citizenship, according to his discretion, and if he order the release of such prisoner without restoration to citizenship, he may at any time thereafter, in his discretion, make a further order restoring to citizenship the prisoner so released.

**Legislation § 1579.** Added by Stats. 1907, p. 587. See ante, Legislation Title I, for original code title, section, etc.

#### **Clerks, appointment and duties of.**

§ 1580. The board of directors shall appoint a clerk for each prison, who shall take an oath of office and enter into a bond to the state, with sureties satisfactory to the board, in the sum of ten thousand dollars, conditioned that they will faithfully discharge the duties required of them. The clerks shall hold their office for the period of four years after such appointments. The clerks shall keep the accounts of the prisons to which they are severally appointed, in such manner as to exhibit clearly all its financial transactions; and the clerks shall perform such other duties as may from time to time be required of them by the board of directors.

**Legislation § 1580.** Added by Stats. 1907, p. 587. See ante, Legislation Title I, for original code title, section, etc.

#### **Removal of wardens, clerks, etc.**

§ 1581. No person shall be appointed to any office by the wardens or be employed in the prisons on behalf of the state who is a contractor or agent, or who is interested directly or indirectly in any business carried on therein; and no male person who is not a qualified elector of the state of California shall be appointed by the wardens to any office in or about the prisons, nor shall any be appointed or employed by virtue of this title, who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal, and it shall be the duty of such warden to discharge such person. Wardens and clerks may be removed by the board of directors at any time for misconduct, incompetency, or neglect of duty; and all other officers and employees may be removed at any time at the pleasure of the wardens.

**Legislation § 1581.** Added by Stats. 1907, p. 587. See ante, Legislation Title I, for original code title, section, etc.

**Wardens and clerks, salaries, etc.**

§ 1582. The wardens' salaries shall be fixed by the board of directors at the time the appointments are made under the provisions of section fifteen hundred and seventy-seven of the Penal Code, which salaries shall not be changed during the term of office of such wardens. The board of directors shall also fix the salaries of the clerks and all other officers and employees in such amounts as the directors may deem just and equitable in each case.

Legislation § 1582. 1. Added by Stats. 1907, p. 588, and then read: "1582. The wardens shall receive a salary of not less than twenty-four hundred dollars, and not to exceed three thousand dollars, per annum, in the discretion of the board of directors. The clerks shall receive a salary not to exceed eighteen hundred dollars per annum, and all other officers and employees shall receive such compensation as the directors may deem just and equitable in each case." 2. Amended by Stats. 1909, p. 428. See ante, Legislation Title I, for original code title, section, etc.

**Contracts.**

§ 1583. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and all other staple supplies needed for the support of the prisons for any period of time, not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for, shall be given to the lowest bidder at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditional upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond with good and sufficient sureties in such sum as the board may require, and to their satisfaction that he will faithfully perform his contract. If the proper officer of the prison reject any article, as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the prison may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof, over the contract price, from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given

for at least two consecutive weeks in two newspapers printed and published in the city and county of San Francisco, and in one newspaper printed and published in the city of Sacramento, and in the county where the prison to be supplied is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded as just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate or they may segregate the items, and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not, in the opinion of the board, faithfully complied therewith.

**Legislation § 1583.** Added by Stats. 1907, p. 588. See ante, Legislation Title I, for original code title, section, etc.

#### **Moneys collected by wardens, disposition of.**

§ 1584. All moneys received or collected by the warden of San Quentin prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require, and at the same time shall be paid into the general fund of the state treasury on the order of the controller, except so much thereof as shall be necessary to be paid into the jute revolving fund as required by the provisions of an act of the legislature approved March ninth, one thousand eight hundred and eighty-five, and amended March sixteenth, one thousand eight hundred and eighty-nine, and of any other act amendatory thereto or supplementary thereto, and

also except so much thereof as shall be received by the warden of said San Quentin prison from the officers and employees thereof in payment for supplies purchased and for commissaries furnished to them by the said San Quentin prison which shall be paid by the warden of said San Quentin prison into the state treasury to the credit of the appropriation for the support of said San Quentin prison. All moneys received or collected by the warden of Folsom prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require and at the same time shall be paid into the state treasury to the credit of the Folsom state prison fund, excepting so much thereof as may be necessary to pay the expenses and money allowed discharged prisoners under the provisions of this title. The wardens shall require vouchers for all moneys by them expended and safely keep the same on file in their respective offices at the prisons. For all sums of money required to be paid other than for the uses above named, as well as for said uses when there is not sufficient money in the hands of the warden, drafts shall be drawn on the controller of the state, signed by at least three of the directors, and the controller of state shall draw his warrant on the state treasurer who shall pay the same out of any moneys belonging to the state prison fund or appropriated for the use or support of the state prisons. The amount of all money retained by the wardens and the aggregate amount paid out shall be reported quarterly to the controller of state and the proper entries shall be made on the controller's books.

Legislation § 1584. 1. Added by Stats. 1907, p. 589. 2. Amended by Stats. 1909, p. 471, (1) in first sentence, adding the second exception at end of sentence, beginning "and also except"; (2) two changes are made from the section as added in 1907, both either clerical or typographical errors, (a) in first sentence, preceding the addition noted supra, the change of "amendatory thereof" to "amendatory thereto," and (b) in sentence beginning "For all sums," the change of "controller of state" to "controller of the state." See ante, Legislation Title I, for original code title, section, etc.

**Moneys collected by wardens, receipts to be given for.**

§ 1585. All revenues of the prisons, unless in this title otherwise provided, shall be paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. When any sum of money is paid to the wardens, who alone are authorized to receipt

for the same and discharge from liability, they shall cause the same to be properly entered on the books by the clerks. On payment of any moneys into the state treasury, as provided in this title, the wardens and state treasurer shall report to the controller of state the amount so paid, and the state treasurer shall give the wardens a receipt therefor, which receipt shall be filed with the controller. The wardens shall report to the controller of state the amount of money paid into said treasury by them during each month, and shall also report to said controller of state the amounts received and disbursed by them every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors.

**Legislation § 1585.** Added by Stats. 1907, p. 589. See ante, Legislation Title I, for original code title, section, etc.

#### **Convicts, employment of.**

§ 1586. All convicts may be employed by authority of the board of directors, under charge of the wardens respectively and such skilled foremen as he may deem necessary in the performance of work for the state, or in the manufacture of any article or articles for the state, or the manufacture of which is sanctioned by law. At San Quentin no articles shall be manufactured for sale except jute fabrics. At Folsom after the completion of the dam and canal the board may commence the erection of structures for jute manufacturing purposes. The board of directors are hereby authorized to purchase from time to time such tools, machinery, and materials, and to direct the employment of such skilled foremen as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured, and not needed by the state, for cash, at private sale, in such manner as provided by law.

**Legislation § 1586.** Added by Stats. 1907, p. 590. See ante, Legislation Title I, for original code title, section, etc.

**Citations.** Cal. 50/119; 77/595.

#### **Prisoners, treatment of.**

§ 1587. In the treatment of the prisoners the following general rules shall be observed:

First. Each convict shall be provided with a bed of straw or other suitable material, and sufficient covering of blankets, and shall be

supplied with garments of coarse, substantial material, of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health.

Second. No punishment shall be inflicted except by the order and under the direction of the wardens.

Third. The warden shall keep a correct account of all money and valuables upon the prisoner when delivered at the prison, and shall pay the amount, or the proceeds thereof, or return the same to the convict when discharged, or to his legal representative in case of his death; and in the case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the state prison fund.

Fourth. The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

Fifth. Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the state for good conduct or diligent labor, or may have been presented to him from any source; and, in case the prisoner has not funds sufficient for present purposes, he shall be furnished with five dollars in money, a suit of clothes, costing not more than ten dollars, and [his fare] by the cheapest route to the place where sentenced from, if the prisoner desires to return there, or to any other place of the same cost [for transportation]; and he shall be entitled, if he so elect, to immunity from having his hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication, the name of any prisoner about to be discharged. When the warden, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. If at the expiration of the term of

sentence the insane convict is still in the insane asylum, he shall be allowed to remain there until discharged cured. It shall be the duty of the warden, also, to send to the directors a copy of such certificate, and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty also to notify the warden of the prison from whence he was received, who shall immediately send for, take, and receive the said convict back into the prison, the time passed at the asylum counting as a part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the warden shall first give notice, in writing, to a judge of the superior court of the county in which the state prison may be located, over which he has control, of the fact of such insanity; whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict and take him before said court. Upon the receipt of such order, it shall be the duty of said sheriff, to whom it is directed, to execute, and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge, after having been notified by the warden, shall neglect to cause such order to be made, as herein provided, or any such sheriff shall neglect to remove such insane convict, as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison is located, in charge of an officer of the prison, or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the state treasury, in

the same manner as when removed by the sheriff, as in this title provided.

Legislation § 1587. Added by Stats. 1907, p. 590. See ante, Legislation Title I, for original code title, section, etc.

**Prisoners, credits of.**

§ 1588. The state board of prison directors shall require of every able-bodied convict confined in a state prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison. Every convict who shall have no infraction of the rules and regulations of the prison, or laws of the state, recorded against him, and who performs in a faithful, orderly, and peaceable manner the duties assigned to him, shall be allowed from his term, instead and lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and pro rata for any part of a year, where the sentence is for or more or less than a year. The mode of reckoning credits shall be as shown in the following table:

No. of Years of Sentence.	Good Time Granted.	Total Good Time Made.	Time to be Served if Full Time is Made.
First year . . .	2 months . .	2 months . . . . .	10 months.
Second year . .	2 months . .	4 months . . . . .	1 year and 8 months.
Third year . . .	4 months . .	8 months . . . . .	2 years and 4 months.
Fourth year . .	4 months . .	1 year . . . . .	3 years.
Fifth year . . .	5 months . .	1 year and 5 months . . . . .	3 years and 7 months.
Sixth year . . .	5 months . .	1 year and 10 months . . . . .	4 years and 2 months.
Seventh year . .	5 months . .	2 years and 3 months . . . . .	4 years and 9 months.
Eighth year . .	5 months . .	2 years and 8 months . . . . .	5 years and 4 months.
Ninth year . . .	5 months . .	3 years and 1 month . . . . .	5 years and 11 months.
Tenth year . . .	5 months . .	3 years and 6 months . . . . .	6 years and 5 months.

And so on, through as many years as may be the term of the sentence. Each convict shall be held entitled to these deductions, unless the board of directors shall find that for misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper, or any foreman, officer, convict, or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the prison, or commit any misdemeanor, or in any manner



violate any of the rules and regulations of the prison, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that, under this section, he may earn in the future, or shall forfeit such part of such deductions as to the board of directors may seem just; such forfeiture, however, shall be made only by the board of directors after due proof of the offense and notice to the offender; nor shall any forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The board shall have power to restore credits forfeited, for such reasons as by [to] them may seem proper.

**Legislation § 1588.** Added by Stats. 1907, p. 592. See ante, Legislation Title I, for original code title, section, etc.

#### **Prisoners, United States.**

§ 1589. All criminals sentenced to the state prisons by the authority of the United States shall be received and kept according to the sentence of the court by which they were tried, and the prisoners so confined shall be subject in all respects and [to] discipline and treatment as though committed under the laws of this state. The wardens are hereby authorized to charge and receive from the United States, for the use of the state, an amount sufficient for the support of each prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other or further charge shall be made by any officer for or on account of such prisoners.

**Legislation § 1589.** Added by Stats. 1907, p. 593. See ante, Legislation Title I, for original code title, section, etc.

#### **Directors, powers of.**

§ 1590. The board of directors shall have power to contract for the supply of gas and water for said prisons, upon such terms as said board shall deem to be for the best interests of the state, or to manufacture gas, or furnish water themselves, at their option. They shall also have power to erect and construct, or cause to be erected and constructed, electrical apparatus or other illuminating-works in their discretion with or without contracting therefor, on such terms as they may deem just. The board shall have full power to erect any building or structure deemed necessary by them, or to alter or improve the same, and to pay for the same from the fund appropriated for the

use or support of the prisons, or from the earnings thereof, without advertising or contracting therefor; provided, that no building or structure, the cost of which will exceed five thousand dollars, shall be erected or constructed without first obtaining the consent of the governor, secretary, and treasurer of the state, or a majority thereof. The board shall have power to give for meritorious service to any convict discharged, or about to be discharged, a sum in addition to that already allowed, not exceeding ten dollars.

**Legislation § 1590.** Added by Stats. 1907, p. 593. See ante, Legislation Title I, for original code title, section, etc.

**Citations.** Cal. 76/516; 145/187.

**Officers and employees, not to receive other compensation than that allowed by directors.**

§ 1591. No officer or employees shall receive, directly or indirectly, any compensation for his services other than that prescribed by the directors; nor shall he receive any compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of the provisions of this section the officer, agent, or employee of the state shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor engaged therein, shall be expelled from the prison grounds, and not again permitted within the same as a contractor, agent, or employee.

**Legislation § 1591.** Added by Stats. 1907, p. 593. See ante, Legislation Title I, for original code title, section, etc.

**Officers and employees, not to make or receive gifts, etc.**

§ 1592. No officer or employee of the state, or contractor, or employee of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a prisoner. For every violation of the provisions of this section, the party engaged therein shall incur the same penalty as prescribed in section one thousand five hundred and ninety-one of this code. No officer or employee of the prison shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by any one for or on behalf of the prisons.

**Legislation § 1592.** Added by Stats. 1907, p. 593. See ante, Legislation for original code title, section, etc.

**Annual reports.**

§ 1593. There shall be printed annually for the use of the prisons five hundred copies of the annual report of the board or directors, and the clerk shall annually transmit to each of the state prisons in the United States one copy of such report.

Legislation § 1593. Added by Stats. 1907, p. 594. See ante, Legislation Title I, for original code title, section, etc.

**Bonds of officers and employees.**

§ 1594. All the bonds of officers and employees under this title shall be deposited with the secretary of state.

Legislation § 1594. Added by Stats. 1907, p. 594. See ante, Legislation Title I, for original code title, section, etc.

**Rebuilding of buildings destroyed by fire.**

§ 1595. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of directors, by and with the advice and consent of the governor, attorney-general, and secretary of state, and the expenses thereof paid out of any funds in the state treasury not otherwise appropriated by law.

Legislation § 1595. Added by Stats. 1907, p. 594. See ante, Legislation Title I, for original code title, section, etc.

**Reports.**

§ 1596. The board of directors must report to the governor from time to time the names of any and all persons confined in the state prisons who, in their judgment, ought to be pardoned out and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, which, in their opinion, should entitle the prisoner to pardon.

Legislation § 1596. Added by Stats. 1907, p. 594. See ante, Legislation Title I, for original code title, etc.

Effect of act. The act of 1907 adding this title to the Penal Code contained the following provision: "Sec. 2. Nothing in this act contained shall be construed to shorten or extend the term of office of any person holding office or employment at the time this act goes into effect under the provisions of an act entitled, 'An Act to regulate and govern the state prisons of California,' approved March 19, 1889, or the acts amendatory thereof or supplementary thereto."

## TITLE II.

## County Jails.

- § 1597. County jails, by whom kept and for what used.
- § 1598. Rooms required in county jails.
- § 1599. Prisoners to be classified.
- § 1600. Prisoners committed must be actually confined.
- § 1601. Sheriff to receive prisoners committed by United States courts.
- § 1602. Sheriff or jailer answerable for safe-keeping of such prisoners.
- § 1603. When jail in contiguous county may be used.
- § 1604. Keeper of jail in contiguous county to receive prisoners.
- § 1605. When jail in contiguous county is not to be used.
- § 1606. Prisoners to be returned to proper county.
- § 1607. Prisoners may be removed in case of fire.
- § 1608. Prisoners may be removed in case of pestilence.
- § 1609. Papers served on jailer for prisoner.
- § 1610. Guard for jail.
- § 1611. Sheriff to receive all persons duly committed.
- § 1612. Prisoners on civil process, when not to be received.
- § 1613. Prisoners may be required to labor.
- § 1614. Rules and regulations for the performance of labor. Credits for good behavior of prisoner confined in county jail.
- § 1615. Hair-cutting for sanitary purposes.

**County jails, by whom kept and for what used.**

§ 1597. The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases;
2. For the detention of persons charged with crime and committed for trial;
3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law;
4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

**Legislation § 1597.** Enacted February 14, 1872; based on Stats. 1851, p. 192, § 17, which read: "§ 17. The county jail shall be kept by the sheriff and used as a prison. 1st. For the detention of persons committed as witnesses in a criminal action. 2d. For the detention of persons committed for

trial for a public offense. 3d. For the confinement of persons committed upon civil process: and 4th. For the confinement of persons sentenced to confinement therein, upon conviction for a public offense, or for examination, charged with having committed a public offense."

Citations. Cal. 78/806.

School of industry at Ione, acts relating to: See post, Appendix, tit. "School of Industry."

School of reform at Whittier, acts relating to: See post, Appendix, tit. "School of Reform."

#### Rooms required in county jails.

§ 1598. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial;
2. Persons already convicted of crime and held under sentence;
3. Persons detained as witnesses or held under civil process, or under an order imposing punishment for a contempt;
4. Males separately from females.

Legislation § 1598. Enacted February 14, 1872; based on Stats. 1851, p. 192, § 19, which read: "§ 19. The court of sessions of the county shall cause a county jail to be erected at the county seat, in case such jail has not been already erected, or shall provide some suitable place for the safe-keeping of prisoners, which place, until the erection of a jail, is considered in this, act as the county jail. The county jail, or the place provided as such shall contain a sufficient number of rooms: 1st. For the confinement of persons committed for trial in criminal actions, separate and distinct from prisoners under sentence. 2d. For the confinement of prisoners under sentence. 3d. For the confinement of persons committed on civil process, or as witnesses in criminal actions, separate from those mentioned in the last two subdivisions."

Males and females to be separated: See post, § 1599.

#### Prisoners to be classified.

§ 1599. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

Legislation § 1599. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 198, § 20.

**Prisoners committed must be actually confined.**

§ 1600. A prisoner committed to the county jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

Legislation § 1600. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 194, § 32.

Citations. Cal. 97/242; 149/891.

**Sheriff to receive prisoners committed by United States courts.**

§ 1601. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this state; provision being made by the United States for the support of such prisoner.

Legislation § 1601. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 196, § 41.

Citations. Cal. 92/422.

**Sheriff or jailer answerable for safe-keeping of such prisoners.**

§ 1602. A sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping in the courts of the United States, according to the laws thereof.

Legislation § 1602. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 196, § 42.

**When jail in contiguous county may be used.**

§ 1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or vacate such order.

Legislation § 1603. 1. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 198, § 21. When enacted in 1872, § 1603 read: "1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the county judge may, by a written appointment filed with the county clerk, designate the jail of a contiguous county

for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment." 2. Amended by Stats. 1901, p. 508; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 709.

#### **Keeper of jail in contiguous county to receive prisoners.**

§ 1604. A copy of the appointment, certified by the county clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe-keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed.

Legislation § 1604. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 193, § 22.

#### **When jail in contiguous county is not to be used.**

§ 1605. When a jail is erected in a county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the judge of the superior court of that county must, by a written revocation, filed with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

Legislation § 1605. 1. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 193, § 23. 2. Amendment by Stats. 1901, p. 508; unconstitutional: See note, § 5, ante. 3. Amended by Stats. 1905, p. 710, changing (1) "in the county" to "in a county," and (2) "county judge" to "judge of the superior court."

#### **Prisoners to be returned to proper county.**

§ 1606. The county clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

Legislation § 1606. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 193, § 24.

#### **Prisoners may be removed in case of fire.**

§ 1607. When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be in-

jured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

Legislation § 1607. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 198, § 25.

**Prisoners may be removed in case of pestilence.**

§ 1608. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the county clerk, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

Legislation § 1608. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 198, § 26.

**Papers served on jailer for prisoner.**

§ 1609. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

Legislation § 1609. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 194, § 28.

**Guard for jail.**

§ 1610. The sheriff, when necessary, may, with the assent in writing of the county judge, or in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe-keeping of prisoners, the expenses of which are a county charge.

Legislation § 1610. Enacted February 14, 1872; in substance the same as Stats. 1851, p. 194, § 29.

**Sheriff to receive all persons duly committed.**

§ 1611. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing,



and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of supervisors, and, except as provided in the next section, to be paid out of the county treasury.

**Legislation § 1611.** Enacted February 14, 1872; in substance the same as Stats. 1851, p. 194, § 80.

**Citations.** Cal. 67/385; 102/480.

#### **Prisoners on civil process, when not to be received.**

§ 1612. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this state are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

**Legislation § 1612.** Enacted February 14, 1872; in substance the same as Stats. 1851, p. 194, § 81.

**Prisoners under civil and criminal process to be kept separate:** See ante, § 1599.

#### **Prisoners may be required to labor.**

§ 1613. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the board of supervisors to perform labor on the public works or ways in the county.

**Legislation § 1613.** Enacted February 14, 1872.

**Citations.** Cal. 97/243.

#### **Rules and regulations for the performance of labor. Credits for good behavior of prisoner confined in county jail.**

§ 1614. The board of supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed; and provide clothing of such a distinctive character for said prisoners as such board, in its discretion, may deem proper. For each month in which the prisoner appears, by the record, to have given a cheerful and willing obedience to the rules and regulations, and that his conduct is reported by the officer in charge of the jail

to be positively good, five days shall, with the consent of the board of supervisors, be deducted from his term of sentence.

**Legislation § 1614.** 1. Enacted February 14, 1872. When enacted in 1872, § 1614 was composed of the first clause of the first sentence of the present section, ending with the words "to be performed." 2. Amended by Stats. 1898, p. 298.

Citations. Cal. 97/243.

**Hair-cutting for sanitary purposes.**

§ 1615. Whenever the board of health of any city or county, or the board of supervisors of any county, or the county physician of any county of this state, presents, or causes to be presented to the sheriff, or other officer having charge of any county jail or prison in any county or city, in this state, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence, that the hair of any criminal or criminals be cut, such sheriff, or other officer, must cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one half inches from the scalp of such person or persons so imprisoned.

**Legislation § 1615.** 1. Addition by Stats. 1901, p. 508; unconstitutional: See note, § 5, ante. 2. Added by Stats. 1905, p. 710; the code commissioner saying, "This section is a codification of § 1 of the statute of 1868, p. 280, to protect the public health."

Approved February 14, 1872.

NEWTON BOOTH, Governor.

**APPENDIX.**  
**(725)**



# APPENDIX.

## ADULTERATION.

**Butter and cheese:** See post, tit. "Butter."

**Olive-oil:** See post, tit. "Olive-oil."

### *An Act to prohibit and punish the sale of adulterated syrup.*

[Approved March 29, 1878; Stats. 1877-78, p. 695.]

§ 1. Selling adulterated syrup.

§ 2. Penalty.

§ 3. Act takes effect when.

#### **Selling adulterated syrup.**

Section 1. Any person who shall knowingly sell, or keep, or offer for sale, or otherwise dispose of any syrup, or golden-drips syrup, silver-drips syrup, or molasses, containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof, shall be guilty of a misdemeanor.

#### **Penalty.**

Sec. 2. Any person violating the provisions of section one of this act shall be punished, and imprisoned in the county jail of the county in which the offense is committed for a period not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

#### **Act takes effect when.**

Sec. 3. This act shall take effect from and after its passage.

### *An Act to prohibit the sophistication and adulteration of wine, and to prevent fraud in the manufacture and sale thereof.*

[Approved March 7, 1887; Stats. 1887, p. 46.]

§ 1. Defining pure wine.

§ 2. Prohibiting deleterious substitutes.

§ 3. Prohibiting use of materials injurious to consumers, for promotion of fermentation.

§ 4. Unlawful sale of impure wines.

- § 5. Excepting champagne and sparkling wine.
- § 6. Penalty.
- § 7. Labels.
- § 8. Pure California wine. Unlawful use of stamps. Crime and punishment.
- § 9. Controller to keep record of stamps.
- § 10. Use and disposition of stamps. Defining crime for violation.
- § 11. Act takes effect when.

#### **Defining pure wine.**

Section 1. For the purposes of this act, pure wine shall be defined as follows: The juice of grapes fermented, preserved, or fortified for use as a beverage, or as a medicine, by methods recognized as legitimate according to the provisions of this act; unfermented grape-juice, containing no addition of distilled spirits, may be denominated according to popular custom and demand, as wine only when described as "unfermented wine," and shall be deemed pure only when preserved for use as a beverage or medicine, in accordance with the provisions of this act. Pure grape-must shall be deemed to be the juice of grapes, only in its natural condition, whether expressed or mingled with the pure skins, seeds, or stems of grapes. Pure condensed grape-must shall be deemed to be pure grape-must from which water has been extracted by evaporation, for purposes of preservation or increase of saccharine strength. Dry wine is that produced by complete fermentation of saccharine contained in must. Sweet wine is that which contains more or less saccharine appreciable to the taste. Fortified wine is that wine to which distilled spirits have been added to increase alcoholic strength, for purposes of preservation only, and shall be held to be pure when the spirits so used are the product of the grape only. Pure champagne, or sparkling wine, is that which contains carbonic-acid gas or effervescence produced only by natural fermentation of saccharine matter of must, or partially fermented wine in bottle.

#### **Prohibiting deleterious substitutes.**

Sec. 2. In the fermentation, preservation, and fortification of pure wine, it shall be specifically understood that no materials shall be used intended as substitutes for grapes, or any part of grapes; no coloring matters shall be added which are not the pure product of grapes during fermentation, or by extraction from grapes with the aid of pure-grape spirits; no foreign fruit-juices, and no spirits

imported from foreign countries, whether pure or compounded with fruit-juices or other material not the pure product of grapes, shall be used for any purpose; no aniline dyes, salicylic acid, glycerine, alum, or other chemical antiseptics or ingredients recognized as deleterious to the health of consumers, or as injurious to the reputation of wine as pure, shall be permitted; and no distilled spirits shall be added except for the sole purpose of preservation and without the intention of enabling trade to lengthen the volume of fortified dry wine by the addition of water, or other wine weaker in alcoholic strength.

**Prohibiting use of materials injurious to consumers, for promotion of fermentation.**

Sec. 3. In the fermentation and preservation of pure wine, and during the operations of fining, or clarifying, removing defects, improving qualities, blending and maturing, no methods shall be employed which essentially conflict with the provisions of the preceding sections of this act, and no materials shall be used for the promotion of fermentation, or the assistance of any of the operations of wine treatment, which are injurious to the consumer or the reputation of wine as pure; provided, that it shall be expressly understood that the practices of using pure tannin in small quantities, leaven to excite fermentation only, and not to increase the material for the production of alcohol; water before or during, but not after fermentation, for the purpose of decreasing the saccharine strength of musts to enable perfect fermentation; and the natural products of grapes in the pure forms as they exist in pure grape-musts, skins, and seeds; sulphur-fumes to disinfect cooperage and prevent disease in wine; and pure gelatinous and albuminous substances, for the sole purpose of assisting fining, or clarification, shall be specifically permitted in the operations hereinbefore mentioned, in accordance with recognized legitimate custom.

**Unlawful sale of impure wines.**

Sec. 4. It shall be unlawful to sell, or expose, or offer to sell under the name of wine, or grape-musts, or condensed musts, or under any names designating pure wines, or pure musts as hereinbefore classified and defined, or branded, labeled, or designated in

any way as wine or musts, or by any name popularly and commercially used as a designation of wine produced from grapes, such as claret, burgundy, hock, sauterne, port, sherry, madeira, and angelica, any substance, or compound, except pure wine, or pure grape-must or pure grape condensed must, as defined by this act, and produced in accordance with and subject to restrictions herein set forth; provided, that this act shall not apply to liquors imported from any foreign country, which are taxed upon entry by custom laws in accordance with a specific duty, and contained in original packages or vessels, and prominently branded, labeled, or marked, so as to be known to all persons as foreign products, excepting, however, when such liquor shall contain adulterations of artificial coloring matters, antiseptic chemicals, or other ingredients known to be deleterious to the health of consumers; and provided further, that this act shall not apply to currant-wine, gooseberry-wine, or wines made from other fruits than the grape, which are labeled or branded and designated, and sold, or offered or exposed for sale under names, including the word wine, but also expressing distinctly the fruit from which they are made, as gooseberry-wine, elderberry-wine, or the like. Any violation of any of the provisions of any of the preceding sections shall be a misdemeanor.

**Excepting champagne and sparkling wine.**

Sec. 5. Exceptions from the provisions of this act shall be made in the case of pure champagne, or sparkling wine, so far as to permit the use of crystallized sugar in sweetening the same according to usual customs, but in no other respect.

**Penalty.**

Sec. 6. In all sales and contracts for sale, production, or delivery of products defined in this act, such products, in the absence of a written agreement to the contrary, shall be presumed to be pure, as herein defined, and such sale or contracts shall, in the absence of such an agreement, be void, if it be established that the products so sold or contracted for were not pure as herein defined; and in such case the concealment of the true character of such products shall constitute actual fraud for which damages may be recovered, and in



a judgment for damages, reasonable attorney fees, to be fixed by the court, shall be taxed as costs.

#### **Labels.**

Sec. 7. The controller of the state shall cause to have engraved plates, from which shall be printed labels, which shall set forth that the wine covered by such labels is pure California wine, in accordance with this act, and leaving blanks for the name of the particular kind of wine and the name or names of the seller of the wine and place of business. These labels shall be of two forms or shapes, one a narrow strip to cap over the corks of bottles, the other a round or square, and sufficiently large, say three inches square, to cover the bungs of packages in which wine is sold. Such labels shall be furnished upon proper application to actual residents, and to be used in this state only, and only to those who are known to be growers, manufacturers, traders, or handlers or bottlers of California wine; and such parties will be required to file a sworn statement with said controller, setting forth that his or their written application for such labels is and will be for his or their sole use and benefit, and that he or they will not give, sell, or loan such label to any other person or persons whomsoever. Such labels shall be paid for at the same rate and price as shall be found to be the actual cost price to the state, and shall be supplied from time to time as needed upon the written application of such parties as are before mentioned. Such label, when affixed to bottle or wine package, shall be so affixed that by drawing the cork from bottle or opening the bung of package, such label shall be destroyed by such opening; and before affixing such labels all blanks shall be filled out, by stating the variety or kind of wine that is contained in such bottle or package, and also by the name or names and post-office address of such grower, manufacturer, trader, handler, or bottler of such wine.

#### **Pure California wine. Unlawful use of stamps. Crime and punishment.**

Sec. 8. It is desired and required that all and every grower, manufacturer, trader, handler, or bottler of California wine, when selling or putting up for sale any California wine, or when shipping

California wine to parties to whom sold, shall plainly stencil, brand, or have printed where it will be easily seen, first, "Pure California wine," and secondly his name, or the firm's name, as the case may be, both on label of bottle or package in which wine is sold and sent; or he may in lieu thereof, if he so prefers and elects, affix the label which has been provided for in section seven. It shall be unlawful to affix any such stamp or label as above provided to any vessel containing any substance other than pure wine as herein defined, or to prepare, or use on any vessel containing any liquid, any imitation or counterfeit of such stamp, or any paper in the similitude or resemblance thereof, or any paper of such form and appearance as to be calculated to mislead or deceive any unwary person, or cause him to suppose the contents of such vessel to be pure wine. It shall be unlawful for any person or persons, other than the ones for whom such stamps were procured, to in any way use such stamps, or to have possession of the same. A violation of any of the provisions of this section shall be a misdemeanor, and punishable by fine of not less than fifty dollars and not more than five hundred dollars, or by imprisonment in the county jail for a term of not exceeding ninety days, or by both such fine and imprisonment. All moneys collected by virtue of prosecutions had against persons violating any provisions of this or any preceding sections, shall go, one half to the informer, and one half to the district attorney prosecuting the same.

#### **Controller to keep record of stamps.**

Sec. 9. It shall be the duty of the controller to keep an account, in a book to be kept for that purpose, of all stamps, the number, design, time when, and to whom furnished. The parties procuring the same are hereby required to return to the controller semi-annual statements, under oath, setting forth the number used, and how many remains on hand. Any violation of this section, by the person receiving such stamps, is a misdemeanor.

#### **Use and disposition of stamps. Defining crime for violation.**

Sec. 10. It shall be the duty of any and all persons receiving such stamps to use the same only in their business, in no manner or in no wise to allow the same to be disposed of except in the manner authorized by this act; to not allow the same to be used by any other

person or persons. It shall be their duty to become satisfied that the wine contained in the barrels or bottles is all that said label imports as defined by this act. That they will use the said stamps only in this state, and shall not permit the same to part from their possession, except with the barrels, packages, or bottles upon which they are placed as provided by this act. A violation of any of the provisions of this section is hereby made a felony.

**Act takes effect when.**

Sec. 11. This act shall take effect and be in force ninety days after its passage.

*An Act to prevent deception in the manufacture and sale of California wines by establishing a uniform wine nomenclature for pure wines, to secure its enforcement, and to provide a penalty for the violation of the provisions thereof.*

[Approved March 6, 1907; Stats. 1907, p. 127.]

- § 1. Uniform wine nomenclature.
- § 2. Unlawful to use prefix on impure wines.
- § 3. Same.
- § 4. Pure wine defined.
- § 5. Penalty for violation of act.
- § 6. Act takes effect when.

**Uniform wine nomenclature.**

Section 1. A uniform wine nomenclature is hereby adopted for pure wines manufactured in this state from the juice of the grape. Such wine nomenclature shall consist in the use of the prefix "Cal" or "Cala" to the name of any kind, type, name or abbreviation of name of wine, as for example: "Calclaret," "Calburgundy," "Calarealing," etc., in stamping or labeling such wines.

**Unlawful to use prefix on impure wines.**

Sec. 2. And it shall be unlawful for any person, firm or corporation, in this state, to use such prefix in connection with wine nomenclature upon any imprint, label, trade-mark, tag, stamp, stencil, paper, or brand, or other inscription or device, placed or impressed upon any vessel, bottles, cask, barrel, case, or package,

containing any liquid substance other than pure wine of California manufacture, made from the juice of the grape; or to use in marking, branding, stamping, stenciling, tagging, or labeling any vessel, bottle, cask, barrel, case, or package containing any liquid other than pure wine of California manufacture, made from the juice of the grape, any imitation or counterfeit of such nomenclature, or any paper or brand in the similitude or resemblance thereof, or any paper or brand of such form and appearance as to be calculated to mislead or deceive any unwary person or cause him to suppose the contents thereof to be pure wine of California manufacture, origin or production, made from the juice of the grape.

**Same.**

Sec. 3. And it shall be unlawful for any person, firm, or corporation, in this state, to sell or offer for sale, or have in his or its possession, for sale, any liquid substance marked, branded or labeled by the use of such wine nomenclature aforesaid, or by the use of any mark, or brand, or stencil in semblance thereof, unless the same be pure wine of California manufacture, made from the juice of the grape.

**Pure wine defined.**

Sec. 4. For the purposes of this act, pure wine shall be such as is defined to be pure wine under the provisions of the laws of the United States relating to the fortification of pure sweet wines, and of the food and drugs act, adopted by the Congress of the United States, and approved June 30th, 1906, and under laws of the state of California now or hereafter adopted.

**Penalty for violation of act.**

Sec. 5. Whoever violates any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars (\$100.), nor more than one thousand dollars (\$1000.), or by imprisonment in the county jail for not less than thirty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

**Act takes effect when:**

Sec. 6. This act shall take effect sixty days after its passage.

*An Act to provide against the adulteration of food and drugs.*

[Approved March 26, 1895; Stats. 1895, p. 71.]

- § 1. Adulterated drugs or food.
- § 2. "Drug" defined. "Food" defined.
- § 3. Drug adulteration defined. Food adulteration defined. Exceptions.
- § 4. Must furnish samples for analysis.
- § 5. Penalty.
- § 6. Act takes effect when.

**Adulterated drugs or food.**

Section 1. No person shall, within this state, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act.

**"Drug" defined. "Food" defined.**

Sec. 2. The term "drug," as used in this act, shall include all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, shall include all articles used for food or drink by man, whether simple, mixed, or compound.

**Drug adulteration defined. Food adulteration defined. Exceptions.**

Sec. 3. Any article shall be deemed to be adulterated within the meaning of this act:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it. (4) If it is an imitation of, or is sold under the name of, another article. (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted,

or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal. (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is. (7) If it contains any added substance or ingredient which is poisonous or injurious to health.

Provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale be distinctly labeled as mixtures or compounds, with the name and per cent of each ingredient therein, and are not injurious to health.

**Must furnish samples for analysis.**

Sec. 4. Every person manufacturing, exposing or offering for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for the analysis of any such drug or article of food which is in his possession.

**Penalty.**

Sec. 5. Whoever refuses to comply, upon demand, with the requirements of section four, and whoever violates any of the provisions of this act, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred nor less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred nor less than thirty days, or both. And any person found guilty of manufacturing, offering for sale, or selling, an adulterated article of food or drug under the provisions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of which said person may have been found guilty of manufacturing, selling, or offering for sale.

**Act takes effect when.**

Sec. 6. This act shall be in force and take effect from and after its passage.

Codification of sections of this act. §§ 1, 2, 3, with the exception of the proviso, were codified in § 383 of the Penal Code, ante.

*An Act to prevent the sale of imitation or adulterated honey, and to provide a punishment therefor.*

[Approved March 26, 1895; Stats. 1895, p. 94.]

This act was superseded by the following act:

*An Act to prohibit the adulteration of honey, and to provide a punishment therefor.*

[Approved February 23, 1897; Stats. 1897, p. 12.]

- § 1. Manufacture of adulterated honey prohibited.
- § 2. Sample for analysis.
- § 3. Extracted honey.
- § 4. Penalties.
- § 5. Act takes effect when.

#### **Manufacture of adulterated honey prohibited.**

Section 1. No person shall, within this state, manufacture for sale, offer for sale, or sell any extracted honey which is adulterated by the admixture therewith of either refined or commercial glucose, or any other substance or substances, article or articles which may in any manner affect the purity of the honey.

#### **Sample for analysis.**

Sec. 2. Every person manufacturing, exposing, or offering for sale, or delivering to a purchaser any extracted honey, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and tender him the value of the same, a sample sufficient for the analysis of any such extracted honey which is in his possession.

#### **Extracted honey.**

Sec. 3. For the purposes of this act, "extracted honey" is the transformed nectar of flowers, which nectar is gathered by the bee from natural sources, and is extracted from the comb after it has been stored by the bee.

#### **Penalties.**

Sec. 4. Whoever violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be fined

not less than twenty-five nor more than four hundred dollars, or imprisoned in the county jail not less than twenty-five days nor more than six months, or both such fine and imprisonment. And any person found guilty of manufacturing, offering for sale, or selling any adulterated honey under the provisions of this act may, in the discretion of the court, be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary costs and expenses, not to exceed fifty dollars, incurred in analyzing such adulterated honey of which such person may have been found guilty of manufacturing, selling, or offering for sale.

**Act takes effect when.**

Sec. 5. This act shall be in force and take effect from and after its passage.

*An Act to prevent the adulteration of paints, oils, varnishes and pigments.*

[Approved March 22, 1907; Stats. 1907, p. 852.]

§ 1. Adulteration of paints prohibited.

§ 2. What shall be deemed adulterated.

§ 3. Misdemeanor.

**Adulteration of paints prohibited.**

Section 1. No person shall within this state manufacture for sale, offer for sale or sell any article, mixture, compound or substance, used in making paints, oils, varnishes or pigments, which is adulterated within the meaning of this act.

**What shall be deemed adulterated.**

Sec. 2. Any article shall be deemed adulterated within the meaning of this act:

1. In case of oils, turpentines, alcohol or other vehicles:

(a) If it contains any other substance or substances, ingredient or ingredients, different from the article under the name of which it is offered for sale or sold;

(b) If any substance has been mixed with it so as to lower, depreciate or injuriously affect the quality, strength or purity of the article;



(c) If any inferior or cheaper substance or substances have been substituted wholly or in part for it;

(d) If it is an imitation, or is sold under the name of any other article.

2. In case of lead, zinc, ocher or other metal, mineral or chemical paints, or any or other pigments in paste form and labeled pure, used in the painting or decorating industry:

(a) If any substance which lowers, depreciates or injuriously affects the quality, strength or purity of the article has been mixed with it, or substituted wholly or in part for it;

(b) If it is an imitation of any other article.

#### Misdemeanor.

Sec. 3. Every person who adulterates or dilutes any article mentioned in this act and sells or offers for sale the same so diluted or adulterated, as undiluted and unadulterated, and every person who sells or offers for sale a different article without informing the purchaser of such difference, and every person who violates any of the provisions of this act is guilty of a misdemeanor.

Act for prevention of the manufacture, sale, or transportation of adulterated, mislabeled, or misbranded drugs: See post, Appendix, tit. "Drugs."

*An Act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded foods and liquors and regulating the traffic therein, providing penalties, establishing a state laboratory for foods, liquors and drugs and making an appropriation therefor.*

[1. Approved March 11, 1907; Stats. 1907, p. 208. 2. Amended February 22, 1909; Stats. 1909, p. 51. 3. Amended March 13, 1909; Stats. 1909, p. 853.]

- § 1. Manufacture and sale of adulterated food prohibited.
- § 2. Definition of term "food."
- § 3. Standard of purity.
- § 4. What constitutes adulteration of food.
- § 5. To what the term "misbranded" applies.
- § 6. Food, mislabeled or misbranded, what shall be deemed as.
- § 7. Definition of the term "package."
- § 8. Possession of adulterated food.
- § 9. State laboratory established. Director of laboratory. Salary. Clerical assistants.
- § 10. Suspected food to be analyzed by state board of health. Duty of sheriffs.

- § 11. Evidence to be reported to district attorney.
- § 12. Unlawful to conceal food.
- § 13. Report to state board of health.
- § 14. Certificate of director.
- § 15. Annual report of director of state laboratory.
- § 16. Hearings for violations of act.
- § 17. Sheriff to purchase samples of alleged adulterated food.
- § 18. Fees of sheriff.
- § 19. Duty of district attorney.
- § 20. Penalty for violation of act.
- § 21. Disposition of fines.
- § 22. Guaranty of jobber protects dealer.
- § 23. Appropriation.
- § 24. Act prohibits manufacture after what date.
- § 25. Repeal of conflicting acts.
- § 26. Act takes effect when.

#### **Manufacture and sale of adulterated food prohibited.**

Section 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the state of California, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any article of food or liquor which is adulterated, mislabeled or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, or corporation who shall import or receive from any other state or territory or the District of Columbia or from any foreign country, or who having so received shall deliver for pay or otherwise, or offer to deliver to any other person, any article of food or liquor adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale, in the state of California any such adulterated, mislabeled or misbranded food, or liquor shall be guilty of a misdemeanor; provided that no article of food shall be deemed adulterated, mislabeled or misbranded within the provisions of this act, when prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such foods shall be in fact sold, or kept or offered for sale for

domestic uses and consumption, then this proviso shall not exempt said article from the operation of any provisions of this act.

**Definition of term "food."**

Sec. 2. The term "food" as used in this act shall include all articles used for food, drink, liquor, confectionery or condiment by man or other animals, whether simple, mixed, or compound.

**Standard of purity.**

Sec. 3. The standard of purity of food and liquor shall be that proclaimed by the Secretary of the United States Department of Agriculture.

**What constitutes adulteration of food.**

Sec. 4. Food shall be deemed adulterated within the meaning of this act, in any of the following cases:

First: If any substance has been mixed or packed, or mixed and packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength, or food value.

Second: If any substance has been substituted wholly or in part for the article of food.

Third: If any essential or any valuable constituent or ingredient of the article of food has been wholly or in part abstracted.

Fourth: If it be mixed, colored, powdered, coated or stained in any manner whereby damage or inferiority is concealed.

Fifth: If it contain any added poisonous or other added deleterious ingredient.

Sixth: If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter; provided that an article of liquor shall not be deemed adulterated, mislabeled or misbranded if it be blended or mixed with like substances so as not to injuriously reduce or injuriously lower or injuriously affect its quality, purity or strength.

Seventh: In the case of confectionery: If it contains terra-alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to

health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Eighth: In the case of vinegar: If it be artificially colored.

Ninth: If it does not conform to the standard of purity therefor as proclaimed by the Secretary of the United States Department of Agriculture. [Amendment. Approved March 13, 1909; Stats. 1909, p. 353.]

**To what the term "misbranded" applies.**

Sec. 5. That the term "misbranded" as used herein shall apply to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food product which is falsely branded as to the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured, or produced.

**Food, mislabeled or misbranded, what shall be deemed as.**

Sec. 6. Food and liquor shall be deemed mislabeled or misbranded within the meaning of this act in any of the following cases:

First. If it be an imitation of or offered for sale under the distinctive name of another article of food.

Second. If it be labeled or branded or colored so as to deceive or mislead, or tend to deceive or mislead the purchaser; or if it be falsely labeled in any respect, or if it purport to be a foreign product tend to mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substance contained therein, which statement, design or device shall be false or misleading in any particular.

Fifth. When any package bears the name of the manufacturers, jobbers or sellers, or the grade or the class of the product, it must bear the name of the real manufacturers, jobbers or sellers and the true grade or class of the product, the same to be expressed in clear and distinct English words in legible type; provided, that an article of food shall not be deemed misbranded, if it be a well-known food product of a nature, quality and appearance, and so exposed to public inspection as not to deceive or mislead nor tend to deceive or mislead a purchaser, and not misbranded and not of the character included within the definitions one to four of this section.

Sixth. If, having no label, it is an imitation or adulteration, or is sold or offered for sale under a name, designation, description or representation which is false or misleading in any particular whatever; and in case of eggs and poultry: if they have been kept or packed in cold storage, or otherwise preserved, they must be so indicated by written or printed label or placard plainly designating such fact when offered or exposed for sale. [Amendment. Approved February 22, 1909; Stats. 1909, p. 51.]

**Definition of the term "package."**

Sec. 7. The term "package" as used in this act shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer, for inclosing any article of food.

**Possession of adulterated food.**

Sec. 8. The possession of any adulterated, mislabeled or misbranded article of food or liquor by any manufacturer, producer, jobber, packer, or dealer in food, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer, or dealer, shall be prima facie evidence of the violation of this act.

**State laboratory established. Director of laboratory. Salary. Clerical assistants.**

Sec. 9. For the purposes of this act there is hereby established a state laboratory for the analysis and examination of food and drugs,

which shall be under the supervision of the state board of health, which laboratory shall be located at such place as the state board of health may select.

The state board of health shall appoint a director of said laboratory, and an assistant to such director, both of whom shall be skilled pharmaceutical chemists and analysts of foods and drugs. Said director shall perform all duties required by this act and which shall be required by the state board of health. The assistant shall be under the supervision of the director, and shall perform all duties required of him by the director and by the state board of health.

The director shall receive an annual salary of three thousand dollars, and the assistant shall receive an annual salary of fifteen hundred dollars. All such salaries shall be paid in the same manner and at the same time as the salaries of state officers.

The state board of health, out of the appropriation hereinafter provided, and out of the funds derived from the operation of this act, may employ and fix the compensation of other and additional clerical and professional assistants.

**Suspected food to be analyzed by state board of health. Duty of sheriffs.**

Sec. 10. The state board of health or its secretary, shall cause to be made by the said director of the state laboratory, examinations and analyses of food and liquor on sale in California, suspected of being adulterated, mislabeled or misbranded at such times and places and to such extent as said board or its secretary may determine, and may appoint such agent or agents, as it may deem necessary, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this act and any agent or sheriff shall have free access, at all reasonable hours, for the purpose of examining any place where it is suspected that any article of adulterated, mislabeled or misbranded foods exist, and such agent or sheriff upon tendering the market price of said articles, if a sale be refused, may take, from any person, firm or corporation samples of any articles suspected of being adulterated, mislabeled or misbranded, and shall deliver or forward such samples to the said director of the state laboratory for examination and analysis,

**Evidence to be reported to district attorney.**

Sec. 11. It shall be the duty of the state board of health whenever it has satisfactory evidence of the violation of any of the provisions of this act respecting the adulteration or misbranding of foods to report such facts to the district attorney of the county where the law is violated, after the hearing provided in section sixteen of this act.

**Unlawful to conceal food.**

Sec. 12. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the state board of health, any sample of food or liquor upon tender of the market price therefor, or to conceal any such food from such officer, or to withhold from him information where such food is kept or stored. Any such person so refusing to sell, or concealing such food, or withholding such information from said officer shall, upon conviction, be punished as provided in section nineteen of the Penal Code of the state of California.

**Report to state board of health.**

Sec. 13. Whenever said director shall find from his examination and analysis that adulterated, mislabeled or misbranded food has been on sale in this state, he shall forthwith report to the secretary of the state board of health.

**Certificate of director.**

Sec. 14. Every certificate signed by the said director of the state laboratory shall be prima facie evidence of the facts therein stated.

**Annual report of director of state laboratory.**

Sec. 15. The said director of the state laboratory shall make an annual report to the state board of health, on or before August first of each year, upon adulterated or misbranded foods and liquors, in which report shall be included the list of cases examined by him in which adulterants were found, and the list of articles found mislabeled or misbranded, and the names of the manufacturers, producers, jobbers and sellers. Said report, or any part thereof, may,

in the discretion of the state board of health, be included in the report which the state board of health is already authorized by law to make to the governor. The state board of health may, in its discretion publish any part of said report in any issue of its monthly bulletin.

#### **Hearings for violations of act.**

Sec. 16. When an examination or analysis of the director of the state laboratory shows that any of the provisions of this act have been violated, notice of that fact together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in this act, and a date shall be fixed by the secretary of the state board of health at which said party or parties may be heard before the state board of health or before any two members thereof and the secretary. The hearing shall be held in the city of Sacramento, and at least fifteen days' notice thereof shall be first served upon the party complained of. These hearings shall be private and confined to questions of fact. Parties interested therein may appear in person or by attorney and may propound interrogatories and submit oral or written evidence to show any fault or error in the findings made by the director of the state laboratory. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing after notice duly served as provided herein, the secretary of the state board of health shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded food was found. No publication as in this act provided shall be made until after said hearing is concluded.

#### **Sheriff to purchase samples of alleged adulterated food.**

Sec. 17. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain by purchase a sample of the adulterated, mislabeled or misbranded food complained of, and divide said article into three parts, and each part shall be sealed by the sheriff with a seal provided for that purpose. If the package be less than four pounds or in volume less than



two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above. One sample shall be delivered to the party from whom procured, or to the party guaranteeing such merchandise, one sample shall be sent to the director of the state laboratory and the third sample shall be sent to and held under seal by the state board of health.

**Fees of sheriff.**

Sec. 18. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such compensation as by the board of supervisors of his county may be deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said supervisors and paid by his said county as other bills of said sheriff.

**Duty of district attorney.**

Sec. 19. It shall be the duty of the district attorney of each county to prosecute all violations of the provisions of this act occurring within his county.

**Penalty for violation of act.**

Sec. 20. Any person, firm, company or corporation violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Food found to be adulterated, mislabeled or misbranded within the meaning of this act may, by order of any court or judge, be seized and destroyed.

**Disposition of fines.**

Sec. 21. One half of all fines collected by any court or judge, for the violations of the provisions of this act shall be paid to the state treasurer and the state treasurer shall deposit such money to the credit of the fund for the maintenance of the state laboratory, to be drawn against by warrants of the state controller upon claims which

shall be approved by the state board of health and by the state board of examiners.

**Guaranty of jobber protects dealer.**

Sec. 22. No dealer shall be prosecuted under the provisions of this act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article to the effect, that the same is not adulterated, mislabeled or misbranded within the meaning of this act, designating it. Said guaranty to afford protection, must contain the name and address of the party or parties making the sales of such article to said dealer, and an itemized statement showing the articles purchased; or a general guaranty may be filed with the Secretary of the United States Department of Agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty with the words "Guaranteed under the food and drugs act June 30, 1906." In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides without this state, and it appears from the certificate of the director of the state laboratory that such article or articles were adulterated, mislabeled or misbranded, within the meaning of this act, or the national pure food act, approved June 30th, 1906, the district attorney must forthwith notify the attorney-general of the United States of such violation.

**Appropriation.**

Sec. 23. The sum of twenty thousand dollars (\$20,000.00) is hereby appropriated out of any money in the state treasury not otherwise appropriated for the purchase of equipment, apparatus, chemicals and supplies of said laboratory and of the office expenses, in connection with the same and for the compensation of additional assistants and other necessary help. The state controller is hereby authorized to draw his warrants for the sums herein appropriated in favor of the secretary of the state board of health and the state treasurer is hereby directed to pay the same.

**Act prohibits manufacture after what date.**

Sec. 24. No article of food as herein defined shall be manufactured or produced in violation of this act from and after the first day of July, nineteen hundred and seven.

**Repeal of conflicting acts.**

Sec. 25. All acts and parts of acts in conflict or inconsistent with this act are hereby repealed.

**Act takes effect when.**

Sec. 26. This act shall be in force and effect from and after the first day of January, nineteen hundred and eight.

## ANIMALS.

**Act creating office of state veterinarian.** 1. In effect March 18, 1899; Stats. 1899, p. 129. 2. Amended March 20, 1905; Stats. 1905, p. 423. 3. Amended March 19, 1909; Stats. 1909, p. 431.

*An Act for the more effectual prevention of cruelty to animals.*

[1. Approved March 20, 1874; Stats. 1873-74, p. 499. 2. Amended by Stats. 1901, p. 285. 3. Amended March 2, 1903; Stats. 1903, p. 69.]

§§ 1-5. Superseded by Civ. Code, §§ 607, 607a, 607f.

§ 6. Superseded by Pen. Code, § 597.

§§ 7, 8, 9. Superseded by Pen. Code, §§ 597a, 597b, 597c.

§ 10. Superseded by Pen. Code, § 599a.

§§ 11, 12, 13. Superseded by Pen. Code, §§ 597d, 597e, 597f.

§§ 14, 15. Superseded by Civ. Code, §§ 607, 607a, 607f.

§§ 16, 17. Superseded by Pen. Code, § 599b.

§§ 20, 21. Superseded by Pen. Code, §§ 599d, 599c, 599e.

§ 22. Superseded by Code Civ. Proc., § 1208a.

*An Act to prohibit the use of the bristle-bur, tack-bur, or other like devices on horses or other animals in this state.*

[Approved March 13, 1908; Stats. 1908, p. 189.]

- § 1. Bristle-bur, tack-bur, etc., on horses, prohibited.
- § 2. Penalty.
- § 3. Conflicting acts repealed.
- § 4. Act takes effect when.

**Bristle-bur, tack-bur, etc., on horses, prohibited.**

Section 1. It shall be unlawful hereafter in this state for any one, owner, driver or other person, having the care, custody or control of any horse or other animal, to use what is known as the bristle-bur, tack-bur, or other like device, by whatsoever name known or designated, on any said horse or other animal for any purpose whatsoever.

**Penalty.**

Sec. 2. A violation of the provisions of this act shall be deemed a misdemeanor and any one found guilty thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten nor more than one hundred and seventy-five days, or may be punished by both such fine and imprisonment.

**Conflicting acts repealed.**

Sec. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

**Act takes effect when.**

Sec. 4. This act shall take effect and be in force from and after its passage.

*An Act to prevent tampering with animals, and to prevent the giving or administering of poison or drugs to horses, cattle, dogs, animals, and other live-stock, except for medicinal purposes, and making the same a misdemeanor.*

[Approved March 23, 1901; Stats. 1901, p. 553.]

- § 1. Unlawful administering of drugs to animals on exhibition.
- § 2. Same.
- § 3. Penalty.
- § 4. Conflicting acts repealed.
- § 5. Act takes effect when.

**Unlawful administering of drugs to animals on exhibition.**

Section 1. It shall be unlawful for any person or persons, except for medicinal purposes, to administer any poison, drug, medicine, or other noxious substance, to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other live-stock, entered or about to be entered in any race or upon any race-course in the state of California, or entered or about to be entered at or with any agricultural park, or association, race-course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or to expose any such poison, drug, medicine, or noxious substance, with intent that the same shall be taken, inhaled, swallowed, or otherwise received by any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock, with intent to impede or affect the speed, endurance, sense, health, physical condition, or other character or quality of such above-mentioned animal, or other live-stock.

**Same.**

Sec. 2. It shall be unlawful for any person or persons to cause to be taken by or placed upon or in the body of any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock, entered or about to be entered in any race upon any race-course in the state of California, or entered or about to be entered at or with any agricultural park, association, race-course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, any sponge, wood, or foreign substance of any kind, with intent to impede or

affect the speed, endurance, sense, health, physical condition, of such horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock.

**Penalty.**

Sec. 3. Any person or persons who shall violate any of the provisions of sections one or two of this act shall be guilty of a misdemeanor.

**Conflicting acts repealed.**

Sec. 4. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

**Act takes effect when.**

Sec. 5. This act shall take effect immediately.

## ARTESIAN WELLS.

*An Act to prevent the waste and flow of water from artesian wells, and prescribing penalties therefor, and defining waste and artesian wells.*

[1. Approved March 6, 1907; Stats. 1907, p. 122. 2. Amended March 25, 1909; Stats. 1909, p. 749.]

- § 1. Uncapped artesian wells declared public nuisance.
- § 2. Artesian well defined.
- § 3. Waste defined.
- § 4. New offense.
- § 5. Penalty.
- § 6. Conflicting acts repealed.
- § 7. Act takes effect when.

**Uncapped artesian wells declared public nuisance.**

Section 1. Any artesian well which is not capped, equipped or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of any water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor; and any person owning, possessing or occupying any land upon which is situated an artesian

well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

**Artesian well defined.**

Sec. 2. For the purposes of this act, an artesian well is defined to be any artificial hole made in the ground through which water naturally flows from subterranean sources to the surface of the ground for any length of time.

**Waste defined.**

Sec. 3. Waste is defined, for the purposes of this act, to be the causing, suffering or permitting any water flowing from an artesian well, to run into any river, creek, or other natural watercourse or channel, or into any bay or pond (unless used thereafter for the beneficial purpose of irrigation of land or domestic use), or into any street, road, or highway, or upon the land of any person, or upon the public lands of the United States or of the state of California, unless it be used thereon for the beneficial purposes of the irrigation thereof or for domestic use or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land whenever over five per cent of the water received on such land for such purposes is allowed to escape therefrom, is also hereby declared to be waste within the meaning of this act; provided, that nothing herein shall prevent the running of artesian water into an artificial pond or storage-reservoir, if used thereafter for a beneficial use; provided, such beneficial use shall not exceed one tenth of one miner's inch of water per acre, perpetual flow, but such user of water shall have the right to cumulate the said amount within any period of each year. [Amendment. Approved March 25, 1909; Stats. 1909, p. 749.]

**New offense.**

Sec. 4. Each day's continuance of such waste shall constitute a new offense under this act.

**Penalty.**

Sec. 5. Any person violating any of the provisions of this act shall, for each offense, upon conviction thereof, be punished by a fine of not less than \$25.00 and not more than \$500.00, or by imprisonment. Pen. Code—48

ment in the county jail for a period of not more than six months, or by both such fine and imprisonment. All prosecutions for the violation of any of the provisions of this act shall be instituted in the justice's court of the county in which such well is situated. Any fine imposed under the provisions of this act may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

**Conflicting acts repealed.**

Sec. 6. All acts and parts of acts in conflict with this act, are hereby repealed.

**Act takes effect when.**

Sec. 7. This act shall take effect immediately.

## BUOYS AND BEACONS.

*An Act for the protection of buoys and beacons.*

[Approved March 26, 1874; Stats. 1873-74, p. 619.]

- § 1. Damages to buoys and beacons.
- § 2. Cost of repairs, and lien for.
- § 3. Act takes effect when.

**Damages to buoys and beacons.**

Section 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States light-house board, or shall in any manner hang on to the same, with any vessel, boat, raft, or scow, or shall willfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state by the authority aforesaid, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one third of the fine in such case to be paid to



the informer, and two thirds thereof to the lighthouse board, to be use in repairing said buoys and beacons.

**Cost of repairs, and lien for.**

Sec. 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or destroyed by any vessel, boat, raft, or scow being made fast to the same, shall, when said cost shall have been legally ascertained, be a lien upon such vessel, boat, raft, or scow, and recovered against the same, and the owner or owners thereof, in an action of debt, in any court of competent jurisdiction in this state.

**Act takes effect when.**

Sec. 3. This act shall take effect from and after its passage.

Codification of act. Portion of this statute was codified by § 609, ante. See also, ante, § 614.

**BUTTER.**

*An Act entitled an act to prevent the sale of short-weight rolls of butter.*

[Approved March 11, 1898; Stats. 1898, p. 151.]

**Short-weight butter.**

Any person or persons, firm or corporation, who offers for sale roll-butter not of full weight to each roll, shall be guilty of a misdemeanor.

**Act takes effect when.**

This act shall go into effect sixty days after its passage.

*An Act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor.*

[Approved March 4, 1897; Stats. 1897, p. 65.]

- § 1. Imitation butter. Imitation cheese.
- § 2. Manufacture and sale of imitation butter, etc.
- § 3. Imitation product must be branded.
- § 4. Duty of common carriers.
- § 5. Descriptive statement must be exposed.
- § 6. Imitation product must be sold as such.
- § 7. Duty of restaurant-keepers.
- § 8. Actions.
- § 9. Presumptive evidence.
- § 10. Erasure of label.
- § 11. Use of pure article in state institutions.
- § 12. Penalties.
- § 13. Possession, presumptive evidence. Samples for analysis.
- § 14. Duty of district attorney.
- § 15. State dairy bureau. Tenure of office. Organisation. Report.
- § 16. Agent, and salary.
- § 17. Appropriations.
- § 18. Inconsistent acts repealed.
- § 19. Act takes effect when.

**Imitation butter. Imitation cheese.**

Section 1. That for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or cream from the same, is hereby declared to be imitation butter; and that for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of cheese, and designated [designed] to be used as substitute for cheese made from pure milk or cream from the same, is hereby declared to be imitation cheese; provided, that the use of salt, rennet, and harmless coloring-matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

**Manufacture and sale of imitation butter, etc.**

Sec. 2. No person, by himself or his agents or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in

his possession with intent to sell, or use, or serve to patrons, guests, boarders, or inmates, in any hotel, eating-house, restaurant, public conveyance or boarding-house, or public or private hospital, asylum, or eleemosynary or penal institution, any article, product, or compound made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced directly and at the time of manufacture from unadulterated milk or cream from the same, which article, product, or compound shall be colored in imitation of butter or cheese produced from unadulterated milk or cream from the same; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances or compounds, designed to be used as an imitation, or as a substitute for butter or cheese made from pure milk or cream from the same, in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration, or ingredients, that causes it to look like butter or cheese made from pure milk or cream, the product of the dairy.

**Imitation product must be branded.**

Sec. 3. Each person who, by himself or another, lawfully manufactures any substance designed to be used as a substitute for butter or cheese, shall mark by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article shall be kept, and in which it shall be removed from the place where it is produced, in a clear and durable manner, in the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall not be less than one inch in height by one half inch in width, and in addition to the above shall prepare a statement, printed in plain Roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the names and actual percentages of the various ingredients used in the manufacture of such imitation butter or imitation cheese; and shall place a copy of said statement within and upon the contents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package as is commonly and most conveniently opened; and shall label

the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of "substitute for butter," or "substitute for cheese."

#### **Duty of common carriers.**

Sec. 4. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by section three of this act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, consigned, and by the carrier receipted for by its true name; provided, that this act shall not apply to any goods in transit between foreign states and across the state of California.

#### **Descriptive statement must be exposed.**

Sec. 5. No person, or his agent, shall knowingly have in his possession or under his control any substance designed to be used as a substitute for butter and cheese, unless the tub, firkin, box, or other package containing the same, shall be clearly and durably marked and contain a copy of the statement and be labeled as provided by section three of this act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in section three of this act shall be kept, with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their possession for the actual consumption of themselves or family.

#### **Imitation product must be sold as such.**

Sec. 6. No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of, any substance designed to be used as a substitute for butter or cheese, under the name of or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be

used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in section three of this act; and no person shall use in any way, in connection or association with the sale, or exposure for sale, or advertisement, of any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

**Duty of restaurant-keepers.**

Sec. 7. No keeper or proprietor of any bakery, hotel, boarding-house, restaurant, saloon, lunch-counter, or other place of public entertainment, or any person having charge thereof, or employed thereat, or any person furnishing board for others than members of his own family, or for any employees where such board is furnished as the compensation or as a part of the compensation of any such employee, shall place before any patron or employee, for use as food, any substance designed to be used as a substitute for butter and cheese, unless the same be accompanied by a copy of the statement described in section three of this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

**Actions.**

Sec. 8. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act by or through any person who was knowingly a party to such wrongful sale or other contract.

**Presumptive evidence.**

Sec. 9. Every person having possession or control of any substance designed to be used as a substitute for butter or cheese which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

**Erasure of label.**

Sec. 10. No person shall efface, erase, cancel, or remove any mark, statement, or label provided for by this act, with intent to mislead, deceive, or to violate any of the provisions of this act.

**Use of pure article in state institutions.**

Sec. 11. No butter or cheese not made wholly from pure milk or cream, salt, harmless coloring-matter, shall be used in any of the charitable or penal institutions that receive assistance from the state.

**Penalties.**

Sec. 12. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished, for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars, or by imprisonment in the county jail for not exceeding thirty days; and for each subsequent offense, by a fine of not less than one hundred and fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court. One half of all the fines collected under the provisions of this act shall be paid to the person or persons furnishing information upon which conviction is procured.

**Possession presumptive evidence. Samples for analysis.**

Sec. 13. Whoever shall have possession or control of any imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, contrary to the provisions of this act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three, of title twelve, of part two, of an act to establish a Penal Code; provided, that it shall be the duty of the officer who serves a search-warrant issued for imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, to deliver to the agent of the dairy bureau, or to any person by such dairy bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forth-

with to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or substance designed to be used as a substitute for butter or cheese, it shall be returned to and retained by the magistrate as and for the purpose contemplated by section fifteen hundred and thirty-six of an act to establish a Penal Code; but if any sample be found not to be imitation butter or imitation cheese, or a substance designed to be used as a substitute for butter or cheese, it shall be returned forthwith to the person from whom it was taken.

**Duty of district attorney.**

Sec. 14. It shall be the duty of the district attorney, upon the application of the dairy bureau, to attend to the prosecution, in the name of the state, of any suit brought for the violation of any of the provisions of this act within his district.

**State dairy bureau. Tenure of office. Organization. Report.**

Sec. 15. The governor shall, on or before the first day of July, eighteen hundred and ninety-seven, appoint three resident citizens of this state, who shall have practical experience in the manufacture of dairy products, to constitute a state dairy bureau, and which shall succeed the one now in existence in every respect. Members of this bureau shall hold office for the period of four years from and after the first day of July, eighteen hundred ninety-seven, and until their successors are appointed and qualified; provided, that the first members appointed under the provisions of this act shall at their first meeting so classify themselves by lot as that one shall go out of office at the expiration of two years, one at the expiration of three years, and the other at the expiration of four years. Any vacancy shall be filled by appointment by the governor for the unexpired term. The members of said bureau shall serve without compensation, and within twenty days after their appointment, shall take the oath of office as required by the constitution, and they shall thereupon meet and organize by electing a chairman and treasurer. Any one of them may be removed by the governor, for neglect or violation of duty. They shall make a report in detail to the legislature not later than the first day of December next preceding the meetings thereof.

**Agent, and salary.**

Sec. 16. It shall be the duty of the state dairy bureau to secure, as far as possible, the enforcement of this act. The state dairy bureau shall have power to employ an agent at a salary of twelve hundred dollars a year, and such assistants or chemists, as from time to time may be necessary therefor.

**Appropriations.**

Sec. 17. There is hereby appropriated for the use of this state dairy bureau, out of any money in the state treasury not otherwise appropriated, the sum of five thousand dollars for each fiscal year hereafter, and commencing with the forty-ninth fiscal year. All salaries, fees, costs, and expenses of every kind incurred in the carrying out of the law shall be drawn from the sum so appropriated, and the state controller shall draw his warrant on the state treasurer in favor of the person entitled to the same.

**Inconsistent acts repealed.**

Sec. 18. All acts and parts of acts inconsistent with this act are hereby repealed.

**Act takes effect when.**

Sec. 19. This act shall take effect immediately.

Prior legislation. For the prior acts on this subject, see Stats. 1895, p. 41; Stats. 1881, p. 14.

Sale of process or renovated butter, a misdemeanor when: See ante, § 383a.

## CONSPIRACY.

*An Act to limit the meaning of the word "conspiracy," and also the use of "restraining orders" and "injunctions," as applied to disputes between employers and employees in the state of California.*

[Approved March 20, 1903; Stats. 1903, p. 289.]

**Combinations in trade disputes not criminal when.**

Section 1. No agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or pro-



cure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the state of California shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of the legislature, but such act of the legislature shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained; provided, that nothing in this act shall be construed to authorize force or violence, or threats thereof.

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act making a conspiracy to commit any crime against the person of, or an attempt to kill or commit any assault upon, the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any executive department of the United States, a felony; and providing a penalty therefor.*

[Approved February 28, 1908; Stats. 1908, p. 58.]

- § 1. Conspiracy to commit crime against President, etc.; penalty.
- § 2. Attempt to kill President. Penalty.
- § 3. Act takes effect when.

**Conspiracy to commit crime against President, etc.; penalty.**

Section 1. If two or more persons conspire to commit any crime against the person of the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, they are guilty of felony, and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

**Attempt to kill President. Penalty.**

Sec. 2. Every person who attempts to kill, or who commits any assault upon the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, is guilty of a felony; and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

**Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after its passage.

**CORONERS.**

Act relating to costs of coroner's inquest in state prison: See post, Appendix, tit. "Costs."

*An Act providing in counties of the first class for the appointment by the coroner of a competent physician for the performance of autopsies upon the bodies of deceased persons when inquests are held, and fixing the compensation therefor.*

[Approved March 14, 1895; Stats. 1895, p. 52.]

- § 1. Coroner to appoint physician in counties of first class, to hold autopsies.
- § 2. Compensation.
- § 3. Act takes effect when.

**Coroner to appoint physician in counties of first class to hold autopsies.**

Section 1. In counties of the first class, the coroner shall appoint a competent physician, whose duties it shall be to perform autopsies upon the bodies of all deceased persons when inquests are held. Such physician shall, after the performance of such autopsy, certify in writing his professional opinion as to the cause of death, which certificate shall be filed with said coroner.

**Compensation.**

Sec. 2. The physician so appointed shall receive as compensation for his said services the sum of twenty-four hundred dollars per annum, which shall be paid out of the general fund of the county in monthly

installments of two hundred dollars, at the same time and in the same manner as county officers are paid.

**Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after its passage.

*An Act to provide an official stenographic reporter to the coroner of each county, or city and county, having one hundred thousand or more inhabitants, and providing the mode in which such reporter shall be appointed, and establishing the compensation and prescribing the duties of such reporter.*

[Approved March 26, 1895; Stats. 1895, p. 168.]

Superseded as to San Francisco. Superseded, as to San Francisco, by its charter.

- § 1. Coroners of cities and counties of one hundred thousand to appoint stenographer.
- § 2. Salary.
- § 3. Duties.
- § 4. Oath.
- § 5. Certified report prima facie correct.
- § 6. Salary, how paid.
- § 7. Act takes effect when.

**Coroners of cities and counties of one hundred thousand to appoint stenographer.**

Section 1. It shall be lawful for the coroner of every county, or city and county, of this state, having one hundred thousand or more inhabitants, to select and appoint an official stenographic reporter, such reporter to hold office during the pleasure of the coroner making the appointment.

**Salary.**

Sec. 2. The said official reporter shall be allowed and shall receive compensation as follows: One hundred and fifty dollars per month.

**Duties.**

Sec. 3. It shall be the duty of said reporter to attend all inquests held by the coroner of the said county, or city and county, and report

in shorthand all testimony of witnesses, and all the proceedings of said inquests, and to transcribe the same into legible longhand and furnish two typewritten copies thereof, and shall certify the same, and file one of the copies with the said coroner and the other copy with the clerk of the said county, or city and county. He shall also, within a reasonable time after such testimony is taken, file with the said clerk the shorthand notes taken by him at each inquest.

#### **Oath.**

Sec. 4. The said official reporter shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

#### **Certified report prima facie correct.**

Sec. 5. Any report of the said official reporter duly appointed and sworn, when written out in longhand writing and certified by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings.

#### **Salary, how paid.**

Sec. 6. The salary of said reporter shall be audited and paid monthly out of the general fund of the said county, or city and county.

#### **Act takes effect when.**

Sec. 7. This act shall take effect from and after its passage.

*An Act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.*

[Approved February 8, 1872; Stats. 1871-72, p. 81.]

- § 1. Coroner may summon a physician, surgeon, or chemist.
- § 2. Compensation to be allowed physician, surgeon, or chemist.

#### **Coroner may summon a physician, surgeon or chemist.**

Section 1. The coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the

stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

Code commissioner's note to § 1. The code commissioner says, in his "List of Statutes in Force," that "As to § 1, [it is] superseded by County Government Act, 1897: 490, § 142."

**Compensation to be allowed physician, surgeon, or chemist.**

Sec. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases de lunatico inquirendo, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the board of supervisors, upon the written certificate of the court or officer requiring such services, as to the extent and supposed value of the same; provided, that such certificate shall not be conclusive as to the amount of compensation.

*An Act to provide for furnishing assistants to the coroner of each city, or city and county having one hundred thousand or more inhabitants, and providing the mode in which such assistants shall be appointed and designated, and establishing the compensation and prescribing the duties of such assistants.*

[Approved March 23, 1898; Stats. 1898, p. 190.]

Superseded as to San Francisco. Act superseded as to San Francisco, by its charter.

- § 1. Coroner to appoint assistants.
- § 2. Classification and designation of assistants. Salaries. Duty of assistants.
- § 3. Salary, how paid.
- § 4. Act takes effect when.

**Coroner to appoint assistants.**

Section 1. It shall be lawful for the coroner to every city, or city and county of this state, having one hundred thousand or more inhabitants, to select and appoint five assistants. Such assistants shall hold their respective offices at the pleasure of said appointing power.

**Classification and designation of assistants. Salaries; duty of assistants.**

Sec. 2. Such assistants shall be classified and designated as follows: First deputy coroner, second deputy coroner, third deputy coroner,

fourth deputy coroner, messenger. Said deputies shall be allowed and receive salaries as follows: The salary of the first deputy shall be two hundred dollars per month; the salary of the second deputy shall be one hundred and fifty dollars per month, the salary of the third and fourth deputies shall be one hundred and twenty-five dollars per month each; the salary of the messenger shall be seventy-five dollars per month. It shall be the duty of said deputies to act as deputy coroners in all matters, except as to those duties which are forbidden to be delegated. It shall be the duty of the messenger to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies.

**Salary, how paid.**

Sec. 3. The salaries of the said assistants shall be audited and paid monthly out of the general fund of the said city, or city and county.

**Act takes effect when.**

[Sec. 4.] This act shall take effect from and after its passage.

## COSTS.

*An Act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.*

[Approved April 12, 1880; Stats. 1880, p. 43.]

- § 1. Costs and expenses of trials of convicts for crimes committed in state prison.
- § 2. Act applies to what cases only.
- § 3. Act takes effect when.

**Costs and expenses of trials of convicts for crimes committed in state prison.**

Section 1. The costs and expenses of all trials which have heretofore been had in the county in this state where the state prison is situated, for any crime committed by any convict in the state prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs

and expenses of all trials heretofore had for the escape of any convict from the state prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the state prison to the county treasurer of said county where said trials have been had; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

**Act applies to what cases only.**

Sec. 2. This act shall only apply to cases which have not been settled for by the state.

**Act takes effect when.**

Sec. 3. This act shall take effect immediately.

## DAIRIES.

*An Act to prohibit adulteration and deception in the sale of dairy products, defining adulteration in dairy products, to establish standards of quality in dairy products and to provide for enforcing its provisions.*

[1. Approved March 15, 1907; Stats. 1907, p. 265. 2. Amended April 22, 1909; Stats. 1909, p. 1088.]

- § 1. Sale of adulterated milk prohibited.
- § 2. Definitions and standards.
- § 3. Duty of state dairy bureau.
- § 4. Penalty for violation of act. Fines.
- § 5. Interference with inspectors.
- § 6. Duty of district attorney.
- § 7. Inconsistent acts repealed.
- § 8. Act takes effect when.

**Sale of adulterated milk prohibited.**

Section 1. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell or offer for sale, or have on hand

for sale, any milk, or product of milk, that is adulterated within the meaning of this act. The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel-keepers, restaurant-keepers and boarding-house keepers or any person who shall serve meals and accept money therefor. The words "product of milk" as used in this act, shall not apply to any product into which milk, or a product of milk, may enter as an ingredient or component of a food product that does not consist of milk, or milk products alone, such as pastry, confectionery and ice-cream, and excepting in case of condensed milk or evaporated milk or cream in which case the provisions of this act shall apply, provided, that this section shall not be construed to prevent the use of common salt (chloride of sodium) in dairy products. Any label, printed matter, or advertising or descriptive matter appearing upon, or in connection with any package, parcel or quantity of milk or milk products when being sold, offered for sale, or having on hand for sale, and having reference to the article being sold, offered for sale, or on hand for sale, shall conform with the provisions of this act, and if it fails to conform with the provisions of this act, such article shall be deemed adulterated under this act. It shall be unlawful for any person under this act, when selling or offering for sale, or having on hand for sale, milk or any product of milk to use the words "milk," "condensed milk," "sweetened condensed milk," "condensed skimmed milk," "evaporated cream," "cream" or "butter," either verbally or printed or written on any label or printed matter used in connection with the sale, or offering for sale, or having on hand for sale, of milk or any product of milk, or upon any bill of fare used in any hotel, restaurant or other places where meals are served when the article shall not conform with the provisions of section two of this act.



**Definitions and standards.**

Sec. 2. Milk and the products of milk enumerated in this section shall be deemed adulterated within the meaning of this act if it or they shall not conform with the following definitions and standards:

1. Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before and five (5) days after calving, and contains not less than three (3.0) per cent of milk-fat, and not less than eight and five tenths (8.5) per cent of solids—not fat, and from which no cream or fat or other solid component has been removed.

2. Skim-milk is milk from which a part or all of the cream has been removed and contains not less than nine and twenty-five hundredths (9.25) per cent of milk solids.

3. Condensed milk or evaporated milk is whole milk from which a considerable portion of water has been evaporated and contains not less than twenty-four and five tenths (24.5) per cent of milk solids, including not less than seven and seven tenths (7.7) per cent milk-fat.

4. Sweetened condensed milk is whole milk from which a considerable portion of water has been evaporated and to which sugar (sucrose) has been added, and contains not less than twenty-four and five tenths (24.5) per cent of milk solids, including not less than seven and seven tenths (7.7) per cent milk-fat.

5. Condensed skim-milk is skim-milk from which a considerable portion of water has been evaporated.

6. Cream is that portion of milk, rich in milk-fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen (18) per cent of milk-fat.

7. Evaporated cream, clotted cream, is cream from which a considerable portion of water has been evaporated.

8. Milk-fat, butter-fat, is the fat of milk and has a Reichert-Meissel number not less than .905 (40 degrees C.).

9. Butter is the clean, non-rancid product made by gathering in any manner the fat or fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or

without salt, and contains not less than 80 per cent of milk-fat. [Amendment. Approved April 22, 1909; Stats. 1909, p. 1088.]

**Duty of state dairy bureau.**

Sec. 3. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county board of health or other city or county official from enforcing the provisions of this act.

**Penalty for violation of act. Fines.**

Sec. 4. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than two hundred (\$200.00) dollars, or by imprisonment in the county jail for not less than ten nor more than sixty days. Provided that no conviction shall be had where a conviction is sought upon any alleged sample of milk, or product of milk, unless such sample has been taken in duplicate, sealed and marked for identification, and one of such samples left with the person accused. All fines collected under this act shall be paid to the state dairy bureau when the complaint is made through the state dairy bureau and the state dairy bureau shall pay the same to the state treasurer and the amount paid by the state dairy bureau to the state treasurer is hereby appropriated to the use of the state dairy bureau in enforcing this act for the fiscal year in which the amount was paid to the state treasurer.

**Interference with inspectors.**

Sec. 5. It shall be unlawful for any person to prevent or interfere with the duly authorized inspectors or agents of the state dairy bureau, or any city or county board of health, from entering any place or premises where milk or products of milk are produced or manufactured or prepared or to prevent or interfere with such inspectors or agents in the event they deem it advisable to secure samples of milk or milk products from any person producing or selling milk or products of milk for the purposing [sic] of analyzing the same to ascertain whether this act is being violated.

**Duty of district attorney.**

Sec. 6. It shall be the duty of the district attorney, upon application of the state dairy bureau or any city or county board of health to attend to the prosecution, in the name of the people, of any complaint entered for violation of any of the provisions of this act within his district.

**Inconsistent acts repealed.**

Sec. 7. All acts, or parts of acts, inconsistent with this act are hereby repealed.

**Act takes effect when.**

Sec. 8. This act shall take effect and be in force sixty days after its passage.

*An Act to prohibit the use of chemicals and other materials in milk and milk products to prevent fermentation therein.*

[Approved March 23, 1907; Stats. 1907, p. 971.]

- § 1. Milk, use of substances to prevent fermentation prohibited.
- § 2. Duty of state dairy bureau.
- § 3. Penalty for violation. Samples of milk. Disposition of fines.
- § 4. Interference with inspectors.
- § 5. Duty of district attorney.
- § 6. Inconsistent acts repealed.
- § 7. Act takes effect when.

**Milk, use of substances to prevent fermentation prohibited.**

Section 1. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or have on hand for sale, any milk or product of milk to which has been added, or that may contain, any compound of boron, salicylic acid, formaldehyde or other chemical or substance for the purpose of preventing or delaying fermentation. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or have on hand for sale, any milk, cream or condensed milk to which any coloring matter has been added by any person or to which any gelatine or other substance has been added by any person to increase the consistency of such milk, cream or condensed milk, so as [to] make such

milk, cream or condensed milk appear richer or to [sic] better quality; provided, that this section shall not be construed to prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese. The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel-keepers, restaurant-keepers and boarding-house keepers, or to any other person who shall serve meals and accept money therefor.

#### **Duty of state dairy bureau.**

Sec. 2. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county board of health or other city or county official from enforcing the provisions of this act.

#### **Penalty for violation. Samples of milk. Disposition of fines.**

Sec. 3. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not less than ten days nor more than sixty days; provided that no conviction shall be had when a conviction is sought upon any alleged sample of milk, or product of milk, unless such sample has been taken in duplicate, sealed, and marked for identification, and one of such samples left with the person accused. All fines collected under this act shall be paid to the state dairy bureau when the complaint is made through the state dairy bureau and the state dairy bureau shall pay the same to the state treasurer and the amount paid by the state dairy bureau to the state treasurer is hereby appropriated

to the use of the state dairy bureau for the fiscal year in which the amount is paid to the state treasurer.

**Interference with inspectors.**

Sec. 4. It shall be unlawful for any person to prevent or interfere with the duly authorized inspectors or agents of the state dairy bureau, or any city or county board of health, from entering any place or premises where milk or products of milk are produced or manufactured, or prepared, or to prevent or interfere with such inspectors or agents, in the event they deem it advisable to secure samples of milk or milk products from any person producing or selling milk or products of milk for the purpose of analyzing the same to ascertain whether this act is being violated.

**Duty of district attorney.**

Sec. 5. It shall be the duty of the district attorney, upon application by the state dairy bureau or by any city or county board of health to attend to the prosecution, in the name of the people, of any complaint entered for the violation of any of the provisions of this act within his district.

**Inconsistent acts repealed.**

Sec. 6. All acts, or parts of acts, inconsistent with this act are hereby repealed.

**Act takes effect when.**

Sec. 7. This act shall take effect and be in force sixty days after its passage.

*An Act to regulate the production and sale of certified milk.*

[Approved March 18, 1909; Stats. 1909, p. 402.]

- § 1. Certified milk, sale of. Uniform requirements.
- § 2. Penalty.

**Certified milk, sale of. Uniform requirements.**

Section 1. No person shall sell or exchange, or offer or expose for sale or exchange, as and for certified milk any milk which does not conform to the regulations prescribed by, and bear the certification of,

a milk commission appointed by a county medical society organized under and chartered by the medical society of the state of California and which has not been pronounced by such authority to be free from antiseptics, added preservatives, and pathogenic bacteria, or bacteria in excessive numbers. All milk sold as certified milk shall be conspicuously marked with the name of the commission certifying it. Provided that such milk commission shall make all requirements for the production and handling of certified milk uniform and fair, and shall not refuse to certify milk for any applicant for certification who shall comply with the provisions of this act, and the requirements of the milk commission whose certification is sought.

#### Penalty.

Sec. 2. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than two hundred (\$200) dollars, or by imprisonment in the county jail for not less than ten (10) nor more than sixty (60) days.

### DRUGS.

Act preventing manufacture, sale, or transportation of adulterated, mislabeled, or misbranded drugs, and establishing a state laboratory for drugs: See ante, Appendix, tit. "Adulteration."

*An Act for the prevention of the manufacture, sale or transportation of adulterated, mislabeled or misbranded drugs, regulating the traffic in drugs and providing penalties for violation thereof.*

[Approved March 11, 1907; Stats. 1907, p. 230.]

- § 1. Sale of adulterated drugs prohibited. Goods intended for export.
- § 2. Definition of term "drug."
- § 3. Standard of purity.
- § 4. What constitutes adulteration.
- § 5. Definition of term "misbranded."
- § 6. What shall be deemed mislabeled or misbranded.
- § 7. Definition of term "package."
- § 8. Evidence of violation of act.
- § 9. State laboratory to analyze suspected drugs. Right of sheriff to purchase or seize.

- § 10. Report to district attorney.
- § 11. Unlawful to refuse to sell to sheriff.
- § 12. When analysis shows adulteration, report.
- § 13. Evidence of facts.
- § 14. Annual report of director of state laboratory.
- § 15. Hearings for violation of act. Where held. Facts to be certified to district attorney.
- § 16. Duty of sheriff.
- § 17. Fees of sheriff.
- § 18. Duty of district attorney.
- § 19. Penalty for violation of act.
- § 20. Disposition of fines.
- § 21. Guaranty of jobber protects dealer. Prosecution of jobber.
- § 22. Act takes effect when.

**Sale of adulterated drugs prohibited. Goods intended for export.**

Section 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the state of California, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any drug which is adulterated, mislabeled or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, or corporation who shall import or receive from any other state or territory or the District of Columbia or from any foreign country, or who having so received shall deliver for pay or otherwise, or offer to deliver to any other person, any drug adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale, in the state of California, any such adulterated, mislabeled, or misbranded drug, shall be guilty of a misdemeanor; provided, that no article shall be deemed misbranded, mislabeled or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this act.

**Definition of term "drug."**

Sec. 2. That the term "drug" as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

**Standard of purity.**

Sec. 3. The standard of purity of drugs shall be the United States Pharmacopœia and National Formulary, and the regulations and definitions adopted for the enforcement of the food and drugs act of June 30, 1906, shall be adopted by the state board of health for the enforcement of this act.

**What constitutes adulteration.**

Sec. 4. Drugs shall be deemed adulterated within the meaning of this act in any of the following cases:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation; provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the package thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary.

Second. If the strength or purity fall below the professed standard or quality under which it is sold.

**Definition of term "misbranded."**

Sec. 5. That the term "misbranded" as used herein shall apply to all drugs, the package or label of which shall bear any statement, design, or device, regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any drug which is falsely branded or labeled as to the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured or produced.



**What shall be deemed mislabeled or misbranded.**

Sec. 6. Drugs shall be deemed mislabeled or misbranded under the meaning of this act in either of the following cases:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package as offered for sale at retail or wholesale, fail to bear a statement on the label of the per cent of volume of alcohol, or the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained therein, except when prescribed by a licensed physician, licensed dentist, or licensed veterinary surgeon.

**Definition of term "package."**

Sec. 7. The term "package" as used in this act shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer, for inclosing any drug.

**Evidence of violation of act.**

Sec. 8. The sale or offering for sale of any adulterated, mislabeled or misbranded drug by any manufacturer, producer, jobber, packer or dealer in drugs, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer or dealer, shall be prima facie evidence of the violation of this act.

**State laboratory to analyze suspected drugs. Right of sheriff to purchase or seize.**

Sec. 9. Whenever required by the state board of health or its secretary, examinations and analyses of drugs on sale in California suspected of being adulterated, mislabeled or misbranded, shall be made by the director of the state laboratory for the examination and analysis of foods and drugs. Said state board of health or the secretary may appoint such agent or agents as it may deem necessary for the enforcement of this act, and the sheriffs of the respective counties

of the state are hereby appointed and constituted such agents. Any agent or sheriff shall have the right to purchase at the place of business of any manufacturer or dealer, any drug suspected of being adulterated, mislabeled or misbranded within the meaning of this act, tendering the market price of said articles, if a sale be refused, he may take from any person, firm or corporation samples of any articles suspected of being adulterated, mislabeled and misbranded, and shall deliver or forward such samples to the said director of the state laboratory for examination and analysis.

**Report to district attorney.**

Sec. 10. It shall be the duty of the state board of health whenever it has satisfactory evidence of the violation of any of the provisions of this act respecting the adulteration, mislabeling or misbranding of drugs, to report such facts to the district attorney of the county where the law is violated.

**Unlawful to refuse to sell to sheriff.**

Sec. 11. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the state board of health, any sample of drug upon tender of the market price therefor, or to conceal any such drug from such officer, or to withhold from him information where such drug is kept or stored. Any such person so refusing to sell, or concealing such drug, or withholding such information from said officer, shall upon conviction, be punished as provided in section nineteen of the Penal Code of the state of California.

**When analysis shows adulteration, report.**

Sec. 12. Whenever said director shall find from his examination and analysis that adulterated, mislabeled or misbranded drugs have been on sale in this state, he shall forthwith report to the secretary of the state board of health, and shall promptly transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded drug was found.

**Evidence of facts.**

Sec. 13. Every certificate signed by the said director of the state laboratory shall be prima facie evidence of the facts therein stated.

**Annual report of director of state laboratory.**

Sec. 14. The said director of the state laboratory shall make an annual report to the state board of health, on or before August first of each year, upon adulterated, mislabeled or misbranded drugs, in which report shall be included the list of cases examined by him in which adulterants were found, and the list of articles found mislabeled or misbranded, and the names of the manufacturers, producers, jobbers and sellers. Said report, or any part thereof, may, in the discretion of the state board of health, be included in the report which the state board of health is already authorized by law to make to the governor. The state board of health may, in its discretion publish any part of said report in any issue of its monthly bulletin.

**Hearings for violation of act. Where held. Facts to be certified to district attorney.**

Sec. 15. When the examination or analysis of the director of the state laboratory shows that any of the provisions of this act have been violated, notice of that fact together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in this act, and a date shall be fixed by the secretary of the board of health at which time said party or parties may be heard before the state board of health or any two members thereof, and the secretary. The hearing shall be held in the city of Sacramento and at least fifteen days notice thereof shall be first served upon the party complained of. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorneys and may propound the interrogatories and submit oral or written evidence to show any fault or error in the findings made by the director of the state laboratory. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing, after notice duly served as provided herein, the secretary of the state board of health shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded drug was found. No publication thereof shall be made until after said hearing is concluded.

**Duty of sheriff.**

Sec. 16. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain by purchase a sample of the adulterated, mislabeled or misbranded drug complained of and divide said article into three parts, and each part shall be sealed by the sheriff with a seal provided for that purpose. If the package be less than four pounds, or in volume less than two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above. One sample shall be delivered to the party from whom procured, or to the party guaranteeing said drug. One sample shall be sent to the director of the state laboratory, and the third sample shall be sent to and held under seal by the state board of health.

**Fees of sheriff.**

Sec. 17. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such compensation as by the board of supervisors of his county may be deemed reasonable, and all accounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said supervisors and paid by his said county as other bills of said sheriff.

**Duty of district attorney.**

Sec. 18. It shall be the duty of the district attorney of each county to prosecute all violations of the provisions of this act occurring within his county.

**Penalty for violation of act.**

Sec. 19. Any person, firm, company or corporation violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Drugs found to be adulterated or misbranded

within the meaning of this act may, by order of any court or judge, be seized and destroyed.

**Disposition of fines.**

Sec. 20. One half of all fines collected by any court or judge for the violations of the provisions of this act shall be paid to the state treasurer and the state treasurer shall deposit such money to the credit of the fund for the maintenance of the state laboratory, to be drawn against by warrants of the state controller upon claims which shall be approved by the state board of examiners.

**Guaranty of jobber protects dealer. Prosecution of jobber.**

Sec. 21. No dealer shall be prosecuted under the provisions of this act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article to the effect, that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty to afford protection, must contain the name and address of the party or parties making the sales of such article to said dealer, and an itemized statement showing the articles purchased; or a general guaranty may be filed with the Secretary of the United States Department of Agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty with the words "Guaranteed under the food and drugs act, June 30, 1906." In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides without this state, and it appears from the certificate of the director of the state laboratory that such article or articles were adulterated or misbranded, within the meaning of this act, or the national pure food act, approved June 30, 1906, the district attorney must forthwith notify the attorney-general of the United States of such violation.

**Act takes effect when.**

Sec. 22. This act shall be in force and effect from and after the first day of January, nineteen hundred and eight.

## ELECTIONS.

*An Act to prohibit "piece clubs," and to prevent extortion from candidates for office.*

[Approved March 14, 1878; Stats. 1877-78, p. 236.]

- § 1. Election expenses; how raised.
- § 2. Misdemeanor.
- § 3. Certain acts declared unlawful.
- § 4. Misdemeanor.
- § 5. Same.
- § 6. Same.
- § 7. Applies only to San Francisco.
- § 8. Act takes effect when.

**Code commissioner's note.** The code commissioner says of this act, in his "List of Statutes in Force," "Modified, if not repealed, by the Parity of Elections Act, 1898: 12."

**Election expenses; how raised.**

Section 1. All payments and contributions of money for election expenses, made by candidates for office in this state, shall hereafter be assessed and made by such candidates by voluntary assessment among themselves, and not otherwise, and at meetings to be called for such purpose, at which meetings none but candidates for office at the next ensuing election shall be present or participate.

**Misdemeanor.**

Sec. 2. Any person being a candidate for office in this state, who shall directly or indirectly pay, or knowingly cause to be paid, any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

**Certain acts declared unlawful.**

Sec. 3. It shall not be lawful for any committee, convention, or other association, formed for the purpose of nominating a candidate or candidates for office in this state, to levy, assess, collect, demand, or receive, directly or indirectly, any money or other valuable thing

from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or distributing tickets, or for any of the expenses of the election of such candidate or candidates, or as or for the expenses of such nominating convention, committee, or other association, or under or upon any pretense whatsoever.

**Misdemeanor.**

Sec. 4. Any officer or member of any such committee, convention, or association, or other person, who shall vote for, aid, authorize, assist, or consent to any such levy, assessment, or collection from any candidate or candidates, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

**Same.**

Sec. 5. Any person who shall demand, ask for, collect, or receive, either directly or indirectly, any money or other valuable thing from any candidate or candidates for office in this state, on the ground that such money or other valuable thing has been assessed to such candidate or candidates, or asked for, demanded, or required by any person, nominating convention, committee, or other political association, as or for the costs of printing or distributing tickets, or for the payment of election expenses of any kind or nature whatsoever, or as or for the expenses of such nominating committee, convention, or association, shall, for each offense, be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly; but nothing herein contained shall prevent the candidates at any election from assembling together and voluntarily assessing themselves for any expenses authorized by law for the common good of the ticket, and to collect and disburse the same by agents appointed for such purpose.

**Same.**

Sec. 6. Any person who shall voluntarily and unsolicited offer to work for and assist, or in any manner whatsoever contribute to the nomination or election of any candidate or other person to any office in this state, for the purpose and with the intent to have such candidate or person pay for, or in any manner compensate such person so

offering for such work or services, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

**Applies only to San Francisco.**

Sec. 7. This act shall apply only to the city and county of San Francisco.

**Act takes effect when.**

Sec. 8. This act shall take effect and be in force from and after its passage.

## EMIGRATION.

*An Act to promote emigration from the state of California.*

[Approved March 26, 1880; Stats. 1880, p. 15.]

**To promote emigration from state.**

Section 1. It shall be unlawful for the owners, officers, agents, or employees of any steamship company, sailing vessel, or railroad company, or firm, or corporation that may be engaged in this state in the transportation of passengers to and from any foreign port, to withhold or refuse any person or persons the right to purchase a passage ticket or tickets to any foreign country, for the reason that he or they have not presented a certificate, card, or other document whatsoever, showing that such person has paid in full, or in part, any or all dues, debts, or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm; and any person or corporation who shall violate the provisions of this section, or in pursuance of any agreement, oral or written, refuse to sell a passage ticket to any person to any foreign country, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars; provided, that nothing in this section shall be construed in any manner to apply to any passport or other document required by law to be presented, having the signature or seal of any foreign consul resident within this state.

**Act takes effect when.**

Sec. 2. This act shall take effect on and after its passage.



## EMPLOYMENT AGENTS.

*An Act defining the duties and liabilities of employment agents, making the violation thereof a misdemeanor and fixing penalties therefor.*

[1. Approved February 12, 1903; Stats. 1903, p. 14. 2. Amended March 18, 1905; Stats. 1905, p. 143. 3. Amended March 3, 1909; Stats. 1909, p. 137. 4. Amended March 6, 1909; Stats. 1909, p. 149.]

- § 1. Employment agent defined.
- § 2. Relative to fees.
- § 3. Employment agents, misrepresentation by. Return of fees paid and certain expenses, when influenced by misrepresentation.
- § 4. Amount of fee to be charged. [Repealed.]
- § 5. Duty of tax-collector.
- § 6. Record of applications.
- § 7. Bureau of labor, right of, to inspect record.
- § 8. Penalty. Disposition of fines.
- § 9. Inconsistent acts repealed.
- § 10. Act takes effect when.

**Employment agent defined.**

Section 1. Any person, firm, corporation, or association pursuing for profit the business of furnishing, directly or indirectly, to persons seeking employment, information enabling, or tending to enable, such persons to secure such employment, or registering for any fee, charge, or commission the names of any person seeking employment as aforesaid, shall be deemed to be an employment agent within the meaning of this act.

**Relative to fees.**

Sec. 2. It shall be unlawful for an employment agent in the state of California to receive, directly or indirectly, any money or other valuable consideration from any person seeking employment, for any information or assistance furnished or to be furnished by said agent to such person, enabling or tending to enable said person to secure such employment, prior to the time at which said information or assistance is actually thus furnished.

**Employment agents, misrepresentation by. Return of fees paid and certain expenses, when influenced by misrepresentation.**

Sec. 3. It shall be unlawful for any employment agent in the state of California, to induce, influence, persuade, or engage any person to

change from one place to another in this state, or to change from any place in any state, territory, or country, to any place in this state to work in any branch of labor, through or by means of any representations whatsoever, whether spoken, written, or advertised in printed form, unless such employment agent shall have assured himself beyond a reasonable doubt that such representations are true and cover all the material facts affecting the employment in question. Whenever any such representation, whereby any person is induced, influenced, persuaded, or engaged to change from one place to another in this state, or from any place in any state, territory, or country, to any place in this state to work in any branch of labor, shall prove to be in any material degree at variance with, or short of the truth, the employment agent responsible for such representations shall immediately return to any person who shall have been influenced, by such representations, any and all fees paid by such person to said employment agent on the strength of such representations, together with an amount of money sufficient to cover all necessary expenses incurred by such person influenced by such representations in going to and returning from, any place he shall have been influenced by such representations to visit in the hope of employment. [Amendment. Approved March 18, 1905; Stats. 1905, p. 143.]

**Amount of fee to be charged.**

Sec. 4. [Repealed March 18, 1905; Stats. 1905, p. 143.]

**Duty of tax-collector.**

Sec. 5. The tax-collector or license-collector of each respective city, county or city and county of the state of California shall furnish quarterly, to the commissioner of the bureau of labor statistics of the state of California the name and address of each employment agent doing business in said city, county or city and county; provided, that where the license is not a county license, but is collected by a municipal government, then the municipal collector of said tax shall furnish the names and addresses.

**Record of applications.**

Sec. 6. Each employment agent in the state of California shall keep a written record, which shall show the name of each person

making application to said agent for registration, information or assistance, such as is described in section two hereof; the name of each such person to whom such registration or information is furnished; and the amount received in each such case therefor; the name of each person who, having received and paid for, as herein contemplated, registration, information or assistance such as is described in section two hereof, fails to secure the employment regarding which such registration, information or assistance is furnished, together with the reason why said employment was not by said person secured, and the name of each person to whom return is made, in accordance with the provisions of section three hereof, of any money or other consideration such as is in said section named, together with the amount of said money, or the value of said consideration, thus returned.

**Bureau of labor, right of, to inspect record.**

Sec. 7. Each employment agent in the state of California shall permit the commissioner of the bureau of labor statistics of said state, by himself, or by his deputies or agents, to have at all times access to, and to inspect, the record in section six hereof named, and upon demand in writing therefor by said commissioner, shall furnish to such commissioner a true copy of said record, or of such portion thereof as said demand in writing shall require a copy of to be thus furnished. The commissioner, his deputies and agents shall have all powers and authority of sheriffs to make arrests for violations of the provisions of this act. [Amendment. Approved March 6, 1909; Stats. 1909, p. 149.]

**Penalty. Disposition of fines.**

Sec. 8. Any employment agent or other person violating or omitting to comply with, any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred (500) dollars, or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics. [Amendment. Approved March 3, 1909; Stats. 1909, p. 137.]

**Inconsistent acts repealed.**

Sec. 9. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

**Act takes effect when.**

Sec. 10. This act shall take effect from and after the date of its passage.

**Constitutionality of statute.** This act was held unconstitutional in the case of *Ex parte Dickey*, 144 Cal. 235. The objectionable part of the statute was § 4, limiting the compensation of employment agents, and making it a misdemeanor to receive any money in excess of the percentage therein provided. This section was repealed in 1905.

**EXPLOSIVES.***An Act to protect life and property against the careless and malicious use or handling of dynamite and other explosives.*

[Approved March 12, 1887; Stats. 1887, p. 110.]

- § 1. Keep record of sales.
- § 2. What record must show.
- § 3. Records subject to examination of peace-officers. Crime, and punishment for violation.
- § 4. Forfeiture in addition to punishment. Settlement of judgment.
- § 5. Prohibiting reckless possession of explosives. Violation a felony.
- § 6. Defining reckless possession.
- § 7. Punishment for unlawful possession.
- § 8. Malicious deposits. Crime, and punishment.
- § 9. Transportation of high explosives. Forfeiture. Disposition of proceeds recovered by judgment.
- § 10. Police-officer may sue for forfeitures.
- § 11. Act takes effect when.

**Keep record of sales.**

Section 1. It is the duty of each and every person, contractor, firm, association, joint-stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitroglycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other dis-

position made by such person, firm, association, joint-stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

**What record must show.**

Sec. 2. Such journal, or record-book, must show in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to provide for identification.

**Records subject to examination of peace-officers. Crime, and punishment for violation.**

Sec. 3. Such journal or record-book must be kept by the person, firm, association, joint-stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business, at all times subject to the inspection and examination of the peace-officers or other police authorities of the state, county, city and county, or municipality where the same is situated, on proper demand made therefor, any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace-officers or other police authorities on demand, shall be deemed a misdemeanor, and punished accordingly.

**Forfeiture in addition to punishment. Settlement of judgment.**

Sec. 4. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint-stock company, or corporation so offending shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, by action at law. The party so instituting such actions shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such

court, after full payment into court, and all moneys so collected shall be paid to the parties bringing the suit.

**Prohibiting reckless possession of explosives. Violation a felony.**

Sec. 5. Any person who in the public street or any highway of any county, city and county, city, or town or city, or at, in, or near to, any theater, hall, public or private school, or college, church, hotel, or other public building, or at, in, or near to, any private habitation, or in, on board of, or near, any railway passenger train, or car or train, or cable-road, or car of the same, or steam or other vessel, engaged in carrying passengers, or ferry-boat, or other public place, where human beings ordinarily pass and repass, shall recklessly or maliciously, have in his or her possession any dynamite, nitroglycerine, vigorite, hercules powder, giant powder, or other high explosive; or who shall recklessly or maliciously by use of such means intimidate, terrify, or endanger any human being, is guilty of a felony, and on conviction shall be punished accordingly.

**Defining reckless possession.**

Sec. 6. Any person not regularly engaged in the manufacture, sale, transportation, or legitimate use in blasting operations, or in the arts, of such substances as are named in this act, shall be presumed (prima facie) to be guilty of a reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the places or under any of the circumstances specified in the preceding section.

**Punishment for unlawful possession.**

Sec. 7. No person may knowingly keep or have in his or her possession any dynamite, vigorite, nitroglycerine, giant powder, hercules powder, or other high explosive, except in the regular course of business carried on by such person, either as a manufacturer thereof, or merchant dealing in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employee of others engaged in the course of such business or operations. Any other possession of any such explosive substances as are named in this act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment

in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

**Malicious deposits. Crime, and punishment.**

Sec. 8. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tram-road, or cable-road, or any train, or car, or any depot, stable, car-house, theater, schoolhouse, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitroglycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison not less than one year.

**Transportation of high explosives. Forfeiture. Disposition of proceeds recovered by judgment.**

Sec. 9. Any person, firm, or corporation, who shall take, carry, or transport, or cause to be taken, carried, or transported, any dynamite, vigorite, nitroglycerine, hercules or giant powder, or other high explosive, into the limits of, or through, or across any incorporated city or town of this state, or into, through, or across any harbor for shipping, in any manner, condition, or quantity, or otherwise, in violation of the laws or ordinances of such city or town, or of the laws or regulations governing such harbor, shall, in addition to the penalties provided or imposed by such laws, ordinances, or regulations, forfeit to the state of California all such explosive substances, as well as the cases inclosing the same. Such forfeiture may be sued for by any citizen of the state, for himself and the state; and the goods or property, when so forfeited and recovered by judgment of the court, shall be sold, and the proceeds divided, the citizen so suing taking one half to himself, for his own benefit, and paying the other half into the state treasury. Such action may be maintained in any court of competent jurisdiction; provided, that the state shall never be liable to any cost or expense for any such suit or proceeding.

## APPENDIX.

... may see for forfeitures.

... of the forfeitures provided for in this act may be ... of, and sued for, and recovered, by any peace-officer ... member of the police force of any city, city and county, ... where the same arises, for his own benefit, notwithstanding ... ordinance, or rule, to the contrary.

... takes effect when.

... 11. This act shall take effect and be in force from and after ...

Qualification of act and sections superseded. §§ 1-4 superseded by Pen. Code, § 375a. § 8 superseded by Pen. Code, § 601.

## FENCES AND INCLOSURES.

*An Act to prevent persons passing through inclosures and leaving them open, by tearing down fences, or otherwise, and to prevent hunting upon inclosed lands in the state of California.*

[1. Approved March 23, 1876; Stats. 1875-76, p. 408. 2. Amended January 35, 1878; Stats. 1877-78, p. 49. 3. Amended March 30, 1878; Stats. 1877-78, p. 776.]

- § 1. Misdemeanor.
- § 2. Same.
- § 3. Same.
- § 4. Same.
- § 5. Same.
- § 6. Penalty.
- § 7. Conflicting acts repealed.
- § 8. Counties excepted.
- § 9. Act takes effect when.

### Misdemeanor.

Section 1. Every person who shall open any gate, bars, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

### Same.

Sec. 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another, is guilty of a misdemeanor.



**Same.**

Sec. 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges firearms, or lights camp-fires thereon, without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

**Same.**

Sec. 4. Every person who willfully, carelessly, or negligently, while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

**Same.**

Sec. 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished, is guilty of a misdemeanor.

**Penalty.**

Sec. 6. Every person found guilty of any of the misdemeanors herein mentioned shall be fined not less than twenty nor more than fifty dollars, and shall be imprisoned in the county jail until such fine be satisfied, not exceeding one day for every two dollars thereof.

**Conflicting acts repealed.**

Sec. 7. All acts and parts of acts in conflict herewith are repealed; provided, however, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the Penal Code.

**Counties excepted.**

Sec. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, Shasta, Plumas, Lassen, Siskiyou, Modoc, Trinity, Sierra, Placer, and Santa Cruz. [Amendment. Approved March 30, 1878; Stats. 1877-78, p. 776.]

Another amendment of § 8 at same session of the legislature. By an act approved January 25, 1878 (Stats. 1877-78, p. 49), § 8 was amended to read:

"Sec. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, San Luis Obispo, Plumas, Lassen, Siskiyou, Modoc, Shasta, Trinity, Sierra, and Placer."

**Act takes effect when.**

Sec. 9. This act shall take effect immediately.

Code commissioner's note to this act. In his "List of Statutes in Force," the code commissioner says of this act: "§ 5 of the act superseded by Pen. Code, § 384b, as adopted in 1905; § 4 superseded by Pen. Code, § 384c, as adopted in 1905; §§ 1-3 probably superseded by Pen. Code, § 602, subds. 8 and 9, as amended in 1905."

**FISH.**

*An Act concerning the payment of the expenses and costs of the trial of persons charged with the violation of the laws for the preservation of fish in the navigable waters of this state.*

[1. Approved February 28, 1887; Stats. 1887, p. 5. 2. Amended February 12, 1903; Stats. 1903, p. 20.]

This act, including the title, was amended by an act approved February 12, 1903 (Stats. 1903, p. 20), to read (§ 4 being new) as follows:

*An Act providing for the payment of the costs and expenses of all trials and proceedings against any person charged with the violation of the laws of this state for the preservation, protection, or restoration of fish.* [Amendment. Approved February 12, 1903; Stats. 1903, p. 20.]

[Approved February 12, 1903; Stats. 1903, p. 20.]

- § 1. Trials of offenses against fish laws. Costs.
- § 2. Claims for costs, where presented.
- § 3. [Renumbered § 5.]
- § 4. Repeal of conflicting acts.
- § 5. Act takes effect when.

**Trials of offenses against fish laws. Costs.**

Section 1. The costs and expenses of all trials and proceedings which shall hereafter be had in any county of this state against any person charged with having violated any of the provisions of any law of this state for the preservation, protection, or restoration of fish, shall be borne and paid by the state.

**Claims for costs, where presented.**

Sec. 2. Any claim against the state for the cost and expenses named in this act shall be presented to the state board of fish commissioners, duly verified, and after approval and allowance by said board, shall be acted upon by the state board of examiners, and paid out of the fish commission fund.

Sec. 3. [Renumbered § 5.]

**Repeal of conflicting acts.**

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed.

**Act takes effect when.**

Sec. 5. This act shall take effect immediately.

*An Act relating to fishing in the waters of this state.*

[Approved April 23, 1880; Stats. 1880, p. 123.]

**Aliens not allowed to fish in waters of state.**

Section 1. All aliens incapable of becoming electors of this state are hereby prohibited from fishing, or taking any fish, lobster, shrimps, or shell-fish of any kind, for the purpose of selling, or giving to another person to sell. Every violation of the provisions of this act shall be a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars, or by imprisonment in the county jail for a period of not less than thirty days.

**Act takes effect when.**

Sec. 2. This act shall take effect and be in force from and after its passage.

**Act held unconstitutional:** In re Ah Chong, 5 Pac. Coast L. J. 451.

*An Act to prevent fishing or the taking of fish by means of weirs, dams, nets, traps or seines in False Bay or in the entrance thereto.*

[Approved March 25, 1909; Stats. 1909, p. 751.]

- § 1. Protection of fish in False Bay.
- § 2. Penalty.
- § 3. Act takes effect when.

**Protection of fish in False Bay.**

Section 1. Any person who, in the waters of False Bay, in the county of San Diego, state of California, or in the entrance of said bay, shall use any weir, dam, net, trap or seine of any description for the purpose of catching fish or who shall, in these waters, take any fish from any weir, dam, net, trap or seine, is guilty of a misdemeanor.

**Penalty.**

Sec. 2. Any person convicted of the violation of any of the provisions of this act shall be fined not less than ten dollars nor more than fifty dollars, or shall be imprisoned in the county jail of said county not less than five days nor more than twenty-five days, or shall be both fined and imprisoned in the discretion of the court.

**Act takes effect when.**

Sec. 3. This act shall take effect immediately.

*An Act to prevent the taking of fish by means of weirs, dams, nets, traps or seines, in certain tide-water on the coast of Mendocino County.*

[Approved March 25, 1909; Stats. 1909, p. 753.]

- § 1. Protection of fish in certain tide-waters of Mendocino County.
- § 2. Extent of tide-water.
- § 3. Act takes effect when.

**Protection of fish in certain tide-waters of Mendocino County.**

Section 1. Any person who in the tide-water of the Noyo, Big, Ten-mile, Garcia, Navarro, or Gualala rivers in Mendocino County, shall use any weir, dam, net, trap or seine of any description for the purpose of catching fish, or who shall in any of said tide-water take any fish of any kind from any weir, dam, net, trap, or seine, is guilty

of a misdemeanor and is punishable by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail of said county not less than five days nor more than twenty-five days, or by both such fine and imprisonment.

**Extent of tide-water.**

Sec. 2. In the construction and meaning of this act the limits of tide-water in the Noyo River shall be deemed to extend from its mouth to the mouth of the South Fork thereof; in the Big River from the mouth thereof to the Laguna; in the Ten-mile River from the mouth thereof to the Soda Springs; in the Garcia River from the mouth thereof to the mouth of the North Fork thereof; in the Navarro River from the mouth thereof to Barton Gulch; in the Gualala River from the mouth thereof to the mouth of the North Fork thereof.

**Act takes effect when.**

Sec. 3. This act shall take effect immediately.

*An Act to prevent the catching of fish by seines, nets, or weirs, in the San Antonio Creek, in the county of Alameda.*

[Approved March 20, 1876; Stats. 1875-76, p. 362.]

- § 1. Use of seines and nets unlawful.
- § 2. Penalty for violation.
- § 3. Act takes effect when.

**Use of seines and nets unlawful.**

Section 1. It shall not be lawful for any person to catch fish in the waters of the San Antonio Creek, in the county of Alameda, by the use of seines, nets, or weirs.

**Penalty for violation.**

Sec. 2. Any person violating the provisions of this act shall be subject to a penalty of not less than fifty nor more than one hundred dollars for each offense, or imprisonment in the county jail of the county of Alameda for a term of not less than thirty nor more than sixty days, which penalty may be enforced by any police judge or justice of the peace of said county.

**Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after its passage.

Setting of seines or nets for fish: See ante, §§ 686, 686a.

***An Act to prohibit the destruction of fish in Alameda County.***

[Approved March 28, 1878; Stats. 1877-78, p. 598.]

- § 1. Catching fish in Lake Chabot.
- § 2. Catching fish in San Leandro Creek. Time of catching defined.
- § 3. Misdemeanor.
- § 4. Act takes effect when.

**Catching fish in Lake Chabot.**

Section 1. It shall not be lawful for any person to catch, take, or destroy any fish of any kind in the body of water known as Lake Chabot, in the San Leandro Creek, in Alameda County, belonging to the Contra Costa Water Company, without permission of the owner or owners thereof.

**Catching fish in San Leandro Creek. Time of catching defined.**

Sec. 2. It shall not be lawful to take, kill, or destroy any brook or speckled trout, salmon, or salmon-trout, or any other species of fish in San Leandro Creek and its branches or tributaries, or in any of the streams or watercourses of said county, between the first day of October of each year and the first day of April of the following year.

**Misdemeanor.**

Sec. 3. Any person violating the provisions of this act shall be guilty of a misdemeanor.

**Act takes effect when.**

Sec. 4. This act shall take effect and be in force from and after its passage.

*An Act to prevent the destruction of fish in King's River.*

[Approved March 28, 1878; Stats. 1877-78, p. 601.]

**Passage of fish through ditches prevented; how.**

Section 1. The proprietors of all water-ditches and flumes, drawing their supply from the waters of King's River, shall place and keep in good repair at the heads of their respective ditches or flumes, through which all the water from the river entering the ditch or flume shall pass, strips of wood or other material, the meshes between which shall not exceed one inch in width, for the prevention of the passage of fish from the river into the flumes or ditches. Any person taking water from King's River in violation of the provisions of this act is guilty of a misdemeanor.

Screens over mill-races, flumes, pipes, etc.: See ante, § 629.

*An Act for the preservation of fish in the waters of Lake Bigler.*

[Approved March 30, 1878; Stats. 1877-78, p. 746.]

- § 1. Catching fish, except by hook and line, in Lake Bigler.
- § 2. Penalty.
- § 3. Fines; how paid.
- § 4. Conflicting acts repealed.
- § 5. Act takes effect when.

**Catching fish, except by hook and line, in Lake Bigler.**

Section 1. It shall not be lawful for any person or persons to catch or kill any fish in the waters of Lake Bigler, or in any stream leading into or from said Lake Bigler, with any seine, gill-net, spear, wire fence, basket, trap-set net, or dam, or any poisonous, deleterious, or stupefying drug or explosive compound, or any other implement or appliance, except by means of a hook and line.

**Penalty.**

Sec. 2. Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, in Placer County, El Dorado County, or Nevada County, shall be punished by a fine of not less than one hundred dollars nor more than five hundred, or by

imprisonment in the county jail not less than thirty days nor more than four months, or by both such fine and imprisonment, in the discretion of the court, for each and every offense, besides the cost of prosecution.

**Fines; how paid.**

Sec. 3. The district attorney, or his deputy, of El Dorado County, or of Placer County, or of Nevada County, whichever the informer may notify as within the district attorney's jurisdiction, shall prosecute such suits, and, upon conviction, all fines, damages, and penalties that may be awarded or collected under this act shall be paid one half to the district attorney and one half to the informer, share and share alike; and it is hereby made the duty of the district attorney, or his appointed deputy, of the counties of Placer, El Dorado, and Nevada, to prosecute all cases arising under this act.

**Conflicting acts repealed.**

Sec. 4. All acts, and provisions of any act or parts of acts, conflicting with this act, are hereby repealed.

**Act takes effect when.**

Sec. 5. This act shall take effect and be in force from and after its passage.

**FLAG.**

Act to prohibit desecration of: Stats. 1899, p. 46.

**GAME LAWS.**

**Fish:** See ante, Appendix, tit. "Fish."

**Act to prevent hunting on inclosed lands:** See ante, Appendix, tit. "Fences and Inclosures."



*An Act for the protection of game in Nevada County.*

[Approved February 6, 1874; Stats. 1873-74, p. 80.]

Code commissioner's note to this act. In his "List of Statutes in Force," the code commissioner says of this act: "Probably modified and repealed by Pen. Code, §§ 626e, 626f, 626h, and 626i."

*An Act to prevent the destruction of deer on Monte Diablo, in Contra Costa County.*

[Approved March 28, 1878; Stats. 1877-78, p. 599.]

**Hunting or killing deer on Monte Diablo. Misdemeanor.**

Section 1. Every person who shall hunt, pursue, kill, or destroy any male or female deer or fawn within three miles of the summit of Monte Diablo, in Contra Costa County, for the period of four years from the date of the passage of this act, is guilty of a misdemeanor.

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act to prevent the capture and destruction of mocking-birds in this state.*

[Approved February 14, 1872; Stats. 1871-72, p. 102.]

- § 1. Mocking-birds must enjoy perfect immunity.
- § 2. Fines, disposition of.
- § 3. Act takes effect when.

**Mocking-birds must enjoy perfect immunity.**

Section 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking-bird in the state of California, or shall knowingly take, injure, or destroy the nest of any mocking-bird, or shall take, injure, or destroy any mocking-bird's eggs, in the nest or otherwise, in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than five dollars nor exceeding ten dollars, and

cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such fine and imprisonment, as the judgment of the court may direct.

**Fines, disposition of.**

Sec. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common-school fund.

**Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after its passage

**GAS.**

*An Act to regulate the use of illuminating-gas.*

[Approved March 20, 1908; Stats. 1908, p. 289.]

**Gas not to be turned off at meter.**

Section 1. Every hotel-keeper, lodging-house keeper, and inn-keeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating-gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating-gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, however, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas-fixtures used in such place or places with a practical and safe automatic gas-igniter.

**Act takes effect when.**

Sec. 2. This act shall take effect and be in force immediately from and after its passage.

## GOVERNOR.

*An Act imposing certain duties upon the governor of the state.*

[Approved April 8, 1876; Stats. 1875-76, p. 855.]

**Reward for stage-robbers.**

Section 1. The governor shall offer a standing reward of three hundred dollars (\$300) for the arrest of each person engaged in the robbery of, or in an attempt to rob any person or persons upon, or having in charge, in whole or in part, any stage-coach, wagon, railroad train, or other conveyance engaged at the time in carrying passengers, or any private conveyance within this state; the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested; but no reward shall be paid except after such conviction.

**Act takes effect when.**

Sec. 2. This act shall take effect from and after its passage.

## GRAND ARMY.

*An Act entitled An Act to prevent persons from unlawfully using or wearing the badge of the Grand Army of the Republic of this state.*

[1. Approved March 10, 1887; Stats. 1887, p. 82. 2. Amended March 1, 1907; Stats. 1907, p. 81.]

**Army badges, penalty for unlawfully wearing.**

Section 1. Any person who shall willfully wear or use the badge or button of the Grand Army of the Republic, or of the United Spanish War Veterans, to obtain aid or assistance thereby within this state, unless he shall be entitled to wear or use the same under the rules and regulations of the Department of California, Grand Army of the Republic, or United Spanish War Veterans, respectively, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for a term not to exceed thirty days in the county jail, or a fine not to exceed twenty dollars, or by both

such fine and imprisonment. [Amendment. Approved March 1, 1907; Stats. 1907, p. 81.]

Sec. 2. [No section of this number.]

**Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after the date of its passage.

### GROWING TREES.

*An Act to protect the groves of big trees in the counties of Fresno, Tulare, and Kern.*

[Approved March 18, 1874; Stats. 1873-74, p. 847.]

- § 1. Misdemeanor.
- § 2. Disposition of fines.
- § 3. Act takes effect when.

#### **Misdemeanor.**

Section 1. Any person or persons who shall willfully cut down or strip of its bark, any tree "over sixteen feet in diameter," in the grove of big trees situated in the counties of Fresno, Tulare, or Kern, or shall destroy any of said trees by fire, shall be guilty of a misdemeanor, and shall, on conviction thereof before any justice of the peace in said counties, be fined not less than (\$50) fifty dollars nor more than (\$300) three hundred dollars, or imprisonment in the county jail not less than (25) twenty-five days nor more than (150) one hundred and fifty days, or both fine and imprisonment, as the court may determine.

#### **Disposition of fines.**

Sec. 2. Upon the arrest and conviction of any person or persons guilty of any of the acts before mentioned, the party informing shall be entitled to one half of the fines collected.

#### **Act takes effect when.**

Sec. 3. This act shall take effect and be in force from and after its passage.

## INFANCY.

Act to prevent sale of liquors to minors: See post, Appendix, tit. "Intoxicating Liquors."

## INTERPRETERS.

*An Act to authorise the appointment of an interpreter of the Italian language and dialects, in criminal proceedings, in cities and counties of one hundred thousand inhabitants.*

[1. Approved March 12, 1885; Stats. 1885, p. 108. 2. Amended March 9, 1895; Stats. 1895, p. 37.]

- § 1. Interpreter of Italian language. Appointing power.
- § 2. Salary.
- § 3. Effect on prior acts.
- § 4. Act takes effect when.

**Interpreter of Italian language. Appointing power.**

Section 1. In all cities and counties of over one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it shall be the duty of the mayor and police judge of such city, or city and county, and of the judge of the superior court of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court and the presiding judge of the police court and the mayor, to appoint an interpreter of the Italian language, who must be able to interpret the Italian language and dialects into the English language, to be employed in criminal proceedings when necessary in said cities, or cities and counties. [Amendment. Approved March 9, 1895; Stats. 1895, p. 37.]

**Salary.**

Sec. 2. The said interpreter shall receive a salary of fifteen hundred dollars per annum, which shall be paid out of the general fund of such city, or city and county.

## APPENDIX.

shall not repeal any act heretofore made and now in force, the appointment of interpreters, except so much of any act as is in conflict with this act in the appointment of Italian interpreters.

shall take effect and be in force from and after the date of its passage.

as to San Francisco: San Francisco Charter, art. v, c. 1.

## INTOXICATING LIQUORS.

to prohibit the sale of intoxicating liquors within a certain distance of any camp or assembly of men, numbering twenty-five or more, engaged upon the construction, repair or operation of any public work, improvement, or utility.

[Approved March 25, 1909; Stats. 1909, p. 722.]

- § 1. Sale of liquors near construction camps.
- § 2. Misdemeanor.
- § 3. Act takes effect when.

### Sale of liquors near construction camps.

Section 1. It shall be unlawful for any person to sell, keep for sale, or give away, any spirituous, vinous, malt or mixed intoxicating liquors at any place situated more than one mile outside the limits of an incorporated city or town, and within four miles of any camp or assembly of men, numbering twenty-five or more, engaged upon, or in connection with, the construction, repair or operation of any public or quasi-public work, improvement or utility; provided, however, that nothing in this section contained shall be deemed to apply to the sale, keeping for sale, or disposal of any such liquor at a licensed saloon or liquor-store which shall have been established, or at a licensed saloon or liquor-store which shall be maintained, at the time this act takes effect, upon the same premises where a licensed saloon or liquor-store shall have been established, at least six months prior to the establishment of

such camp or assembly of men, or to the sale, keeping for sale, or disposal of any such liquors at any winery, licensed brewery or distillery, where the same is manufactured.

**Misdemeanor.**

Sec. 2. Any person violating any of the provisions of this statute shall be guilty of a misdemeanor, and, for each offense, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**Act takes effect when.**

Sec. 3. This act shall take effect immediately.

*An Act to prevent the sale of intoxicating liquors to persons addicted to the inordinate use of intoxicating liquors.*

[Approved March 19, 1889; Stats. 1889, p. 352.]

- § 1. To prohibit furnishing intoxicating liquor to person inordinately using it.
- § 2. Not to apply to physicians.
- § 3. Act takes effect when.

**To prohibit furnishing intoxicating liquor to person inordinately using it.**

Section 1. Any person who, after receiving notice that a person named in said notice is addicted to the inordinate use of intoxicating liquors, should the person named in said notice be so addicted, shall thereafter within a period of twelve months furnish to said person so addicted to the inordinate use of intoxicating liquors, any spirituous liquors, wines, or intoxicating or malt liquors, shall be guilty of a misdemeanor and punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine or [and] imprisonment. Said notice shall be in writing and may be given by any adult member of the family of said person so addicted to the inordinate use of intoxicating liquors, or by any adult relative of said person so addicted to the inordinate use of said intoxicating liquors.

**Not to apply to physicians.**

Sec. 2. The provisions of this act shall not prohibit any regularly licensed physician from furnishing or prescribing said liquors in case of sickness.

**Act takes effect when.**

Sec. 3. This act shall take effect from and after its passage.

**Sale of intoxicating liquor to habitual drunkard: See ante, § 397.**

**JUVENILE COURT.**

*An Act to amend an act entitled, "An Act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organisations receiving children under this act, and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence." Approved February 26, 1903.*

[1. Approved March 22, 1905; Stats. 1905, p. 806. 2. Amended March 21, 1907; Stats. 1907, p. 777. 3. Repealed March 8, 1909; Stats. 1909, pp. 218, 226, § 29.]

This act was repealed by the following act:



*An Act concerning dependent and delinquent minor children, providing for their care, custody and maintenance until twenty-one years of age; providing for their commitment to the Whittier State School and the Preston State School of Industry, and the manner of such commitment and release therefrom, establishing a probation committee and probation officers to deal with such children, and fixing the salaries of probation officers; providing for detention homes for said children; providing for the punishment of persons responsible for, or contributing to, the dependency or delinquency of children; and giving to the superior court jurisdiction of such offenses, and repealing inconsistent acts.*

[Approved March 8, 1909; Stats. 1909, p. 218.]

JUVENILE COURT LAW.

- § 1. Name of act. "Dependent child" defined.
- § 2. Juvenile court, function of.
- § 3. Complaint, form of.
- § 4. Citation to persons having custody of child. Failure to answer citation. Summary disposition of case.
- § 5. Commitment, order for, and to where.
- § 6. Probation committee, appointment of.
- § 7. Term of office.
- § 8. Compensation.
- § 9. Committee may be required to do what. Duty of probation committee.
- § 10. County probation officer.
- § 10a. Salaries in counties of first class.
- § 10b. Second class.
- § 10c. Third class.
- § 10d. Fourth class.
- § 10e. Fifth class.
- § 10f. Sixth class.
- § 10g. Seventh class.
- § 10h. Eighth class.
- § 10i. Ninth class.
- § 10j. Salaries in other counties.
- § 10k. Twentieth and thirtieth classes.
- § 10l. Twenty-fifth, thirty-third, thirty-fifth, fortieth, forty-second, forty-third, forty-fifth, forty-sixth, forty-seventh, fifty-second, and fifty-third classes.
- § 10m. Eleventh class.
- § 10n. Fifty-sixth and fifty-seventh classes.
- § 10o. Every other county.
- § 11. How paid.
- § 12. Expenses allowed.
- § 13. Office of probation officer created.
- § 14. Duty of clerk of court.
- § 15. Inquiries as to cause of dependency. Duties and powers of probation officer. Duties of deputy.

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§ 1399 (1) Any charges against minors... in the  
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 § 1400 (2) Any petition for... of any...  
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 § 1401 (3) Satisfaction of judgments in felony cases  
 ... on pending hearing  
 ... of the declared delinquent  
 ... of insurance. When county shall pay.  
 ... may be modified.  
 ...  
 ... the age of sixteen, detection of  
 ... provision for  
 ... parents and guardians.  
 ... to be... Certain words defined.  
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 ... Judgments heretofore made, effect of

**Section 1399. "Dependent child" defined.**

The words "dependent child" shall be known as the "Juvenile Court Act"  
 ... under the age of eighteen years  
 ... a state institution.  
 ... the words "dependent child" shall  
 ... the age of eighteen years:  
 ... or gathering alms, whether in  
 ... or offering anything for  
 ... in public place for the purpose  
 ... alms, or  
 ... any home, or any  
 ... or any visible  
 ... has no parent or  
 ... providing proper parental



(8) Who frequents the company of reputed criminals, vagrants or prostitutes; or

(9) Who is found living or being in any house of prostitution or assignation; or

(10) Who habitually visits, without parent or guardian, any saloon, pool-room or place where any spirituous, vinous or malt liquors are sold, bartered or given away; or

(11) Who persistently refuses to obey the reasonable and proper order or directions of his parents or guardian; or

(12) Who is incorrigible; that is, who is beyond the control and power of his parents, guardian or custodian by reason of the vicious conduct or nature of said minor; or

(13) Whose father is dead or has abandoned his family or is an habitual drunkard, or whose father does not provide for such minor, and it appears that such minor is destitute of a suitable home or of adequate means of obtaining an honest living, or is in danger of being brought up to lead an idle or immoral life; or where both parents of such child are dead, or the mother, if living, is unable to provide proper support and care of such minor child; or

(14) Who is an habitual truant within the meaning of an act entitled "An Act to enforce the educational rights of children and providing penalties for the violation of said act," approved March 24, 1903, and who is not placed in a parental school under the provisions of said act, or who being over the age of fourteen years refuses to attend public or private school, as directed by his parents, duly authorized guardian or legal custodian; or

(15) Who habitually uses intoxicating liquor as a beverage or habitually smokes cigarettes or who habitually uses opium, cocaine, morphine or other similar drug, without the direction of a competent physician.

The words "delinquent child" shall include any child under the age of eighteen years who violates any law of this state, or any ordinance of any town, city, county or city and county of this state, defining crime.

**Juvenile court, function of.**

Sec. 2. The superior court in every county of this state shall exercise the jurisdiction conferred by this act, and, while sitting in the

exercise of its said jurisdiction, shall be known and referred to as the "juvenile court," and is hereinafter so referred to. In counties having more than one judge of the superior court, the judges of such court shall from time to time designate one or more of their number whose duty it shall be to hear all cases coming under this act. In counties of the first class, such designation shall be made by the presiding judge. The orders and findings, if any, of the superior court, in all cases coming under the provisions of this act, shall be entered in a book to be kept for that purpose and known as the "juvenile court record," and the court when acting under this act shall be called the "juvenile court." All cases coming under the provisions of this act shall be heard at a special or separate session of the court, and no other matter shall be heard at such session, nor shall there be permitted to be present at such session any person on trial or awaiting trial, or under accusation of crime, who does not come under the provisions of this act.

#### **Complaint, form of.**

Sec. 3. Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent child, and praying that the superior court deal with such child as provided in this act. Such petition shall be verified and shall contain a statement of facts constituting such dependency or delinquency, as defined in section 1 of this act. There shall be no fee for filing such petition.

#### **Citation to persons having custody of child. Failure to answer citation. Summary disposition of case.**

Sec. 4. Upon the filing of the petition provided for in section 3 hereof, a citation shall issue, requiring the person or persons having the custody or control of the child, or with whom the child may be, to appear with the child at a time and place stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein for such appearance. The parents or guardian of the child, if residing within the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent nor guardian so residing, or if their places of residence be not known to petitioner, then some relative

of the child, if any there be residing within said county, and if his residence and relationship to such child be known to petitioner, shall be notified of the proceedings by service of citation requiring him or them to appear at the time and place stated in such citation. In any case the judge may appoint some suitable person to act in behalf of the child, and may order such further notice of the proceedings to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring the child, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in other cases of contempt of court. In case such citation cannot be served, or the party served fails to obey the same, and in any case in which it shall be made to appear to the court that such citation will probably be ineffective, a warrant of arrest shall issue on the order of the court, either against the parent or guardian, or the person having the custody of the child, or with whom the child may be, or against the child himself, or any or all of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the child immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the child may be retained in the possession of the person having charge of him, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise as the court may direct.

**Commitment, order for, and to where.**

Sec. 5. When any minor child under the age of nineteen years shall be found by said court or judge to be dependent or delinquent, within the meaning of this act, the court may make an order committing the child, for such time during its minority as the court may deem fit, to the care of some reputable citizen of good moral character, or to the care of some association, society or corporation willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, or to the care of the probation officer or other person to remain in the home of the

child. The court may thereafter set aside, change or modify such order, at any time during the minority of such child, and said child, if a boy, may be committed to the Preston State School of Industry, or to the Whittier State School, during his minority, or, if a girl, may be committed to the Whittier State School until twenty-one years of age; provided, however, that before conveying any such minor to either of such institutions it shall be ascertained from the superintendent thereof whether such child can be received; and if such child cannot be received, the court shall make such other order for the disposition of such child as it meet.

**Probation committee, appointment of.**

Sec. 6. The judge of the superior court in and for each county, or city and county, of the state, and in counties where there is more than one judge of the said court, the judge who has been designated as "judge of the juvenile court" shall, by an order entered in the minutes of the court, appoint seven discreet citizens of good moral character and of either sex, to be known as the "probation committee," and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee and thereupon said persons shall appear before the judge of the superior court to whom has been assigned all proceedings under this act, and qualify by taking an oath, which shall be entered in said juvenile court record, to faithfully perform the duties of a member of such probation committee.

**Term of office.**

Sec. 7. The members of such probation committee shall hold office for four years, and until their successors are appointed and qualify; provided, that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of four years; when any vacancy occurs for any other reason, the appointee shall hold office for the unexpired term of his predecessor.

**Compensation.**

Sec. 8. Members of the probation committee shall serve without compensation.

**Committee may be required to do what. Duty of probation committee.**

Sec. 9. The superior court or any judge thereof may at any time require said probation committee or probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, receiving, or applying for, any child or children under this act, and to report thereon to the court; provided, that nothing in this section shall be construed as giving any probation committee or probation officer any power to enter any institution without the consent of such institution.

It shall be the duty of each probation committee, prior to the first day of December in each year, to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in such report said committee may make such suggestions or comments as to them may seem fit; such report to be filed in the office of the clerk of the court appointing such committee for the information of the judges thereof. The probation committee shall also have the control and management of the internal affairs of any detention home heretofore or hereafter established by the board of supervisors of their county; and it shall be the duty of the board of supervisors to provide for the payment of such employees as may be needed in the efficient management of such detention home.

**County probation officer.**

Sec. 10. There shall be appointed, as hereinafter provided, a probation officer in every county, and he may appoint as many deputies as he may desire; provided, however, that such deputies shall not have authority to act until their appointment shall be approved in like manner as the appointment of the probation officer himself. Such deputies, except as hereinafter provided, shall serve without compensation.

**Salaries in counties of first class.**

Sec. 10a. In counties, or cities and counties, of the first class, there shall be one probation officer and ten assistant probation officers. The salaries of said officers shall be as follows: Probation officer, \$225 per month; one assistant probation officer, \$175 per month; and nine assistant probation officers, at \$125 per month each.

**Second class.**

Sec. 10b. In counties of the second class there shall be one probation officer and six assistant probation officers. The salaries of said officers shall be as follows: Probation officer, \$200 per month; one assistant probation officer, \$150 per month; five assistant probation officers, \$100 per month each.

**Third class.**

Sec. 10c. In counties of the third class, there shall be one probation officer and four assistant probation officers. The salaries of said officers shall be as follows: Probation officer, \$175 per month; one assistant probation officer, \$125 per month; and three assistant probation officers, \$100 per month each.

**Fourth class.**

Sec. 10d. In counties of the fourth class there shall be one probation officer and one assistant probation officer. The salaries of said officers shall be as follows: Probation officer, \$150 per month; assistant probation officer, \$100 per month.

**Fifth class.**

Sec. 10e. In counties of the fifth class there shall be one probation officer and one assistant probation officer. The salaries of said officers shall be as follows: Probation officer, \$175 per month; assistant probation officer, \$150 per month.

**Ninth class.**

Sec. 10i. In counties of the ninth class there shall be one probation officer whose salary shall be \$125 per month.



**Salaries in other counties.**

Sec. 10j. In counties of the eighth, tenth, sixteenth and seventeenth classes there shall be one probation officer. The salary of each of said probation officers shall be \$100 per month.

**Twentieth and thirtieth classes.**

Sec. 10k. In each of the counties of the twentieth and thirtieth classes there shall be one probation officer. The salary of each of said probation officers shall be \$75 per month.

**Twenty-fifth, thirty-third, thirty-fifth, fortieth, forty-second, forty-third, forty-fifth, forty-sixth, forty-seventh, fifty-second, and fifty-third classes.**

Sec. 10l. In each of the counties of the twenty-fifth, thirty-third, thirty-fifth, fortieth, forty-second, forty-third, forty-fifth, forty-sixth, forty-seventh, fifty-second and fifty-third classes there shall be one probation officer. The salary of each of said probation officers shall be \$10 per month.

**Eleventh class.**

Sec. 10m. In each of the counties of the eleventh class there shall be one probation officer. The salary of said probation officer shall be \$80 per month.

**Fifty-sixth and fifty-seventh classes.**

Sec. 10n. In each of the counties of the fifty-sixth and fifty-seventh classes there shall be one probation officer. The salary of each of said probation officers shall be \$5 per month.

**Every other county.**

Sec. 10z. In every other county than those heretofore expressly enumerated the salary of the probation officer shall be \$35 per month.

**How paid.**

Sec. 11. The salaries of all probation officers and assistant probation officers shall be paid out of the county treasury of the county for

which they are appointed, respectively, in the same manner as the salaries of county officers.

**Expenses allowed.**

Sec. 12. The probation officers and assistant probation officers and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and said expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses.

**Office of probation officer created.**

Sec. 13. The offices of probation officer and assistant probation officer are hereby created. The probation officers and assistant probation officers to serve hereunder in any county or city and county shall be nominated in such manner as the judge of the juvenile court in the respective counties or city and county shall direct; and the appointment of such probation officers and assistant probation officers shall then be made by the judges of the respective juvenile courts. The term of office of probation officers and of assistant probation officers shall be two years from the date of their said appointments. Such probation officers and assistant probation officers may at any time be removed by the judge appointing them, in his discretion.

**Duty of clerk of court.**

Sec. 14. It shall be the duty of the clerk of any court before which a child is brought under the provisions of this act, before hearing, to notify the probation officer of the county thereof; except in cases where the child is brought before the court by a society, association or corporation which embraces within its objects the care of dependent or delinquent children, and which has in the last report thereon by the probation committee of such county, been favorably passed upon.

**Inquiries as to cause of dependency. Duties and powers of probation officer. Duties of deputy.**

Sec. 15. The probation officer shall inquire into the antecedents, character, family history, environment and cause of delinquency or dependency of every child brought before the juvenile court, and shall make his report in writing to the judge thereof; provided, however, that only when the judge so specially orders shall he make such inquiry or report in the case of a dependent or delinquent child who is already in charge of a society, association or corporation which embraces within its objects the care of dependent children, and which has in the last report thereon by the probation committee of such county been favorably passed upon. In the event that such a society, association or corporation shall be so in charge it shall through its agents or superintendent make such report to the judge in place of the probation officer.

It shall be the duty of said probation officer, agent or superintendent of such society, association or corporation to be present in court in order to represent the interests of the child when the case is heard, and to furnish to the court such information and assistance as it may require and to make such report at such time; and to take such charge of the child before and after the hearing as may be ordered. Every probation officer and assistant probation officer shall have the powers of a peace-officer. At any time, in his discretion, such officer may bring any child committed to his care before the court for such further or other action as the court may deem proper.

Any of the duties of a probation officer may be performed by an assistant or deputy probation officer, and shall be so performed whenever directed by the probation officer; and it shall be the duty of the probation officer to see that his assistant and deputy probation officers perform their duties.

**Criminal charges against minors, proceedings in. Bail. Orders of juvenile court. Statutes of limitation suspended. Order of discharge, effect of.**

Sec. 16. Whenever a deposition or complaint shall be filed in any court other than a superior court, charging a person with a crime

and it shall be suggested to the judge, justice or recorder before whom such person is brought that the person charged is under the age of eighteen years, said judge, justice or recorder shall immediately suspend all proceedings against such person on said charge and examine into the age of such person and if, from such examination, it shall appear to the satisfaction of said judge, justice or recorder that such person is under the age above specified, he shall forthwith certify to the juvenile court of his county (a) that said person (naming him) is charged with such crime (briefly stating its nature); (b) that the age of such person, exactly as possible, giving the birthday when known, and (c) the suspension of proceedings against such person on such charge by reason of his age, with the date of such suspension; and immediately thereupon all proceedings against the said person on said charge shall be suspended until said juvenile court shall issue its mandate, as hereinafter provided, directing the court before which said charge was pending to proceed with the examination into or trial thereof, and the court so suspending its proceedings shall forthwith cause such person to be taken before the juvenile court of his county for consideration and proceedings under this act. When such person shall be brought before the judge of the juvenile court said judge shall cause a complaint to be filed as provided in section 3 of this act and shall fix a time for considering said matter and shall cause citation to be issued, as provided in section 4 of this act. Pending such hearing, said judge may admit such person to bail or otherwise provide for his temporary custody in any manner provided herein for the care of a child after the finding of its delinquency. The judge of said juvenile court may further investigate the age of such person and may also inquire into the condition and care of such person and make such orders for his disposition under the provisions of this act as he may deem proper. If said judge shall, after such investigation, decide that such person was at the time said offense was alleged to have been committed of the age of eighteen years or more, such determination shall be conclusive and he shall immediately issue his mandate directing the court before which such charge is pending to proceed therewith, and upon receipt of such mandate said court shall proceed with the examination or trial of said charge as though no suspension thereof had taken place;

provided, however, that if the court shall find that the person so charged is under the age of eighteen years and a fit subject for consideration under the provisions of this act, and is a delinquent child, he may make such order or orders hereunder as he may deem best in relation to such person; provided further, however, that if such judge shall at any time conclude that such person is not a fit subject for further consideration under this act, he may remand such person to the court in which said person is charged with said offense for further proceedings on said charge, and upon receipt of the mandate of said juvenile court, or the judge thereof, the court before which said charge is then pending shall be vested with full authority to proceed with the examination or trial thereof. All statutes of limitation relating to the charge so pending against such person shall be suspended as to said person and charge from the issuance by said judge, justice or recorder of his certificate hereinbefore provided for until said juvenile court, or the judge thereof, shall issue its mandate remanding such person for further proceedings as aforesaid; and all statutes of limitation relating to any charge, made in any court, against any person under the age of eighteen years, shall be suspended as to such charge and person whenever, and as long as, such person is before the juvenile court for consideration under the provisions of this act, or is detained by virtue of any commitment issued hereunder and unrevoked; provided, however, that if said child shall be discharged by the juvenile court as reformed, such order of discharge shall constitute a bar to any further proceedings in any court against said child upon said charge.

**Delinquency, petition for. Notice of hearing. Criminal prosecutions barred, when.**

Sec. 17. Whenever it is claimed that any child under the age of eighteen years is a delinquent child as defined in this act, a verified petition shall be filed in the juvenile court of the county wherein said delinquency occurred, stating such delinquency and the facts constituting the same, and that said child is under the age of eighteen years, and praying that the said court shall adjudge said child to be a delinquent child within the meaning of this act. Notice shall be given of the time and place of hearing as in the case of a child alleged

to be a dependent child, and the petition shall be heard at the time and place designated by the juvenile court. If the court shall adjudge the child to be a delinquent child within the meaning of this act, such order shall be made as is meet in the premises, as in this act provided. If upon said hearing said court shall determine that said child is not a fit and proper subject to be dealt with under the reformatory provisions of this act, said court may dismiss the petition hereunder and direct that such child be prosecuted under the general law. No child under eighteen years of age shall be prosecuted for crime until the matter has first been submitted to the juvenile court by petition as herein provided, or by certificate of the lower court as provided in section 16 hereof.

#### **Suspensions of judgments in felony cases.**

Sec. 18. Whenever any person over the age of eighteen years and under the age of twenty years is accused of a felony, and the indictment or information has been filed in the superior court of the county wherein the crime was committed, charging said person with the commission of said felony, the judge may, in his discretion, with the consent of the accused, or upon his request, arrest said proceeding at the time of arraignment or at any time previous to the impanelment of a jury, except where the crime charged is a capital offense or an attempt to commit a capital offense, and may proceed to investigate the charge against the defendant, and all the facts and circumstances necessary to determine the proper disposition to be made of said person, and shall determine whether said person shall be dealt with as a delinquent under the provisions of this act. If the court is satisfied upon such investigation that said person should be declared a delinquent and should be dealt with under this act, it may make such order as herein provided for the disposition of delinquent children. If such person thereafter prove not to be amenable to the discipline of the school to which he may be committed, and the trustees thereof shall determine that said person should be committed to a state penitentiary, such person shall be returned to the custody of the sheriff of the county in which such crime was committed, and thereafter proceedings shall be had upon the indictment or information commencing at the point at which proceedings

were arrested; and said person shall be tried for the offense alleged in the information, and if convicted shall be sent to the penitentiary for such time as the court may determine, or otherwise dealt with in accordance with the law for dealing with persons convicted of a felony. If no request is made by the defendant for proceedings under this statute, or if the defendant desires a trial by jury, or if the judge declines to consent to the application of the defendant for proceedings under this statute, said cause shall proceed in the ordinary manner up to the verdict of guilty or not guilty, as the case may be. If said person is convicted, the court may thereafter receive such evidence as may be offered, touching the question as to whether or not said person should be dealt with as a delinquent in the manner hereinbefore provided in case of the application and consent of the accused before trial, and may make such order of probation or commitment to said state schools, and may from time to time modify said probation orders, as is herein provided in the case of children adjudged delinquent. If such person during the period of his commitment to said state institution, proves to be incorrigible or not amenable to the discipline of such institution, and it shall be deemed advisable in the judgment of the trustees of such institution that said person be sent to the penitentiary, then said person shall be returned to the superior court in which the verdict was rendered, for sentence, and thereupon the court shall pronounce judgment.

#### **Detention pending hearing.**

Sec. 19. In the case of a child alleged to be delinquent within the meaning of this act, the juvenile court may, pending the hearing, at any time before the child is adjudged delinquent or otherwise disposed of, order that said child be detained in any detention home provided for that purpose by any county or it may be otherwise temporarily provided for as to the court may seem fit in any manner provided herein for the care of a child after the termination of his delinquency.

#### **Disposition of child declared delinquent.**

Sec. 20. If the court find a child to be delinquent, then the court may commit the child to the care and custody of the probation officer

and may allow the said child to remain in the home of said child, subject to the visitation of a probation officer, and such child shall report to the probation officer as often as may be required, and be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable, or the court may commit the child to the care and custody of the probation officer, to be placed in a suitable family home subject to the supervision of said probation officer and the further order of the court; or it may order the probation officer to board out the child in some suitable family home in case provision is made by voluntary contribution or otherwise for the payment of the board of said child until suitable provision may be made for the child in a home without such payment; or the court may commit the child for such time during its minority as to the court may seem fit to the care and custody of some association, society or corporation that will receive it, embracing within its object the care of dependent or delinquent children; or the court may commit said child to a state school as hereinbefore provided, or to such other state institution as may be authorized by law to receive it. Provided further, that should the legislative body of the county or city and county, or if a municipality, provide a suitable place for the detention of such dependent or delinquent children which they are hereby authorized and required to do, such children may be committed thereto after the adjudication of dependency or delinquency for a definite period to be specified in such order, at the end of which time said child shall be brought before the court for further order of court. The court may thereafter set aside, change or modify said order and provide for a further detention in said place. The court shall retain the jurisdiction of any child who is found to be delinquent until such child attains its majority, or if a girl, until said child attains the age of twenty-one years (unless she is married with the consent of the court), or until said court is satisfied that said minor has fully reformed and that further direction and supervision under the provisions of this act are unnecessary for his reformation. If a boy, said child may be committed by said court to the Whittier State School or the Preston State School of Industry at any time during his minority for the period of his minority. If a girl, she may be committed to the said Whittier State School at any time before she is twenty-one years of age until she



is twenty-one years of age. Such child may be committed to any other institution now or hereafter provided by the state for such children. If such child, after being committed to the Whittier State School or the Preston State School of Industry or such other institution, shall there prove to be incorrigible or incapable of reformation under the discipline of the school to which he may be committed, such child may be returned to the court for such further order or disposition as may at that time be determined. Upon the return of said child to the custody of the juvenile court, if said child be accused of felony, it shall be the duty of the judge of said court to sit as a committing magistrate and hold the preliminary examination of such child, and if upon said hearing he shall determine that there is probable cause to believe that the child has committed the offense charged in the petition theretofore filed in said court, he shall hold such child to answer to the superior court, and thereupon the usual proceedings shall be had for the trial of said case in the superior court after the filing of the information in pursuance to said order of said judge sitting as a committing magistrate, and said child shall be tried by court and jury in the usual manner for the trial of a felony. Provided, however, that no minor under the age of fourteen years at the time of the commission of the offense with which he is charged shall ever be sent to a penitentiary until he has first been committed to the Whittier State School or the Preston State School of Industry and has there proved to be incorrigible or not amenable to the discipline of said school. No minor who is under the age of eight years or who is suffering from any contagious, infectious or other disease which would probably endanger the lives or health of the other inmates of said state schools shall be committed thereto. No minor shall be committed to said state schools unless the judge of said court shall be fully satisfied that the mental and physical condition and qualifications of said minor are such as to render it probable that such minor will be benefited by the reformatory educational discipline of such schools.

**Expense of maintenance. When county shall pay.**

Sec. 21. Any order providing for the custody of a dependent or delinquent child may provide that the expense of maintaining such child shall be paid by the parent or parents or guardian of such

child, and in such case shall state the amount to be so paid, and shall determine whether or not the parent or parents or guardian shall exercise any control of said child, and define the extent thereof. Any disobedience of such order or interference with the custody of the child as therein determined shall constitute a contempt of court.

If it be found, however, that the parent or parents or guardian of a dependent or delinquent child is unable to pay the whole expense of maintaining such child, the court may, in the order providing for the custody of such child, direct such additional amount as may be necessary to support such child to be paid from the county treasury of the county for the support of such child, the amount so ordered to be paid from the treasury of said county not to exceed, in case of any one child, the sum of eleven dollars per month; provided, further, that no order for the payment or all or part of the expense of support and maintenance of a dependent or delinquent child from the county treasury shall be effective for more than six months, unless a new order is secured at the expiration of that period. The court may thereafter set aside, change or modify any order herein provided for.

#### **Orders may be modified.**

Sec. 22. Any order made by said court in case of a dependent or delinquent person may at any time be changed and modified as to the judge may seem meet and proper.

#### **Private hearings.**

Sec. 23. Any child shall be entitled to a private hearing upon the question of its dependency or delinquency, and upon the request of said child, or either of his parents or guardian, such hearing shall be had privately in the manner provided by law for private hearings at preliminary examinations. An order of court adjudging a child dependent or delinquent under the provisions of this act shall in no case be deemed to be a conviction of crime.

#### **Minors under the age of sixteen, detention of.**

Sec. 24. No court, judge, magistrate or peace-officer shall commit a child under sixteen years of age to any jail or prison, before trial and conviction, but if any such child is not released pending such

hearing, he may be committed to the care and custody of a sheriff, constable or other peace-officer who shall keep such child in a detention home or some other suitable place outside of the inclosure of any jail or prison, as the court may direct. When any child under sixteen years of age shall be sentenced to confinement in any institution to which adult convicts or prisoners are sentenced or confined, it shall be unlawful to confine such child in the same room, yard or inclosure with such adult convicts or prisoners, or to permit such child to come or remain in contact with such adult convicts or prisoners.

**"Detention home," provision for.**

Sec. 25. It shall be the duty of the legislative body of every county, or city and county, immediately upon this act becoming effective, to provide and thereafter maintain, at the expense of such county, or city and county, a suitable house or place to be known as the "detention home" of said county, or city and county, for the detention of dependent and delinquent children. Such detention home must not be in, or connected with, any jail or prison, and shall be conducted in all respects as nearly like a home as possible and shall not be deemed to be or treated as a penal institution. Such governing body must also provide for a suitable superintendent and matron to have charge of such detention home, and provide for the payment, out of the general fund of the county, or city and county, of suitable salaries for such superintendent and matron, such employees to be appointed by said governing body, upon the nomination of the probation committee and approval of the judge of the juvenile court.

**Penal liability of parents and guardians.**

Sec. 26. In all cases where any child shall be dependent or delinquent under the terms of this act, the parent or parents, legal guardian or person having the custody of such child, or any other person who shall, by any act or omission, encourage, cause or contribute to the dependency or delinquency of such child shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one thousand dollars or imprisonment in the county jail for not more than one year or by both such fine and imprison-

ment, and the juvenile court shall have jurisdiction of all such misdemeanors; provided, however, that the court may suspend sentence for a violation of the provisions of this section and impose conditions as to the conduct, in the premises, of any person so convicted, and make such suspension to depend upon the fulfillment by such person of such conditions, and, in case of the breach of such conditions, or any thereof, the court may impose sentence as though there had been no such suspension. The court may also, as a condition of such suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring same, to secure the performance by such person of the conditions imposed by the court on such suspension. Such bond shall by its terms be made payable to the state of California, and any moneys received for a breach thereof shall be paid into the county treasury.

**Act, how to be construed. Certain words defined.**

Sec. 27. This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by his parents, and in all cases where it can be properly done, the child shall be placed in an approved family, with people of the same religious belief, and become a member of the family, by legal adoption or otherwise. No child shall be taken from the custody of his parent or legal guardian, without the consent of such parent or guardian, unless the court shall find such parent or guardian to be incapable, or has failed or neglected to provide proper maintenance, training and education for the child; or unless said child has been tried on probation in said custody, and has failed to reform, or unless the court shall find that the welfare of said child requires his custody shall be taken from said parent or guardian.

In this act, words used in any gender shall include all other genders, and the word "county" shall include "city and county," the plural shall include the singular and the singular shall include the plural.

**Certain acts superseded.**

Sec. 28. This act shall supersede all provisions of the act entitled: "An Act to establish a state reform school for juvenile offenders, and

to make an appropriation therefor," approved March 11, 1889, and all amendments thereto, and all provisions of the act entitled: "An Act to establish a school of industry and to provide for the maintenance and management of same, and to make an appropriation therefor," approved March 11, 1889, and all amendment thereto relating to the mode of commitments to the institutions therein named; but said acts shall control as to all matters concerning the management of said institutions, respectively.

**Certain acts repealed. Judgments heretofore made, effect of.**

Sec. 29. An act entitled: "An Act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence," approved February 26, 1903; and the amendments thereto approved March 22, 1905, and March 27, 1907, are hereby repealed; provided, however, that all orders and judgments made heretofore under said act shall continue in full force and effect, and that the court shall retain jurisdiction of all children heretofore declared dependent or delinquent, and such children shall be hereafter dealt with in the same manner as if such orders had been made under the provisions of this act, and all proceedings now pending shall be continued under the provisions of this act. All children now on probation from justice courts shall remain on probation for the period fixed in the judgment, and if required may be certified to the superior court in the manner in said act provided. When so certified the said certificate shall be dealt with in the same manner as herein provided for a petition alleging delinquency.

**Act takes effect when.**

Sec. 30. This act shall take effect immediately.

**LABOR UNIONS.**

*An Act to prevent persons from unlawfully wearing the button of any labor union of this state.*

[Approved March 20, 1909; Stats. 1909, p. 546.]

**Labor unions, protection of button.**

Section 1. Any person who shall willfully wear the button of any labor union of this state, unless entitled to wear said button under the rules of such union, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for a term not to exceed twenty days in the county jail or by a fine not to exceed twenty dollars, or by both such fine and imprisonment.

*An Act to prevent persons from unlawfully using a union card.*

[Approved March 22, 1909; Stats. 1909, p. 668.]

**Union card, unlawful use of.**

Section 1. Any person, who shall willfully use the card of any labor union to obtain aid, assistance or employment, thereby within this state, unless entitled to use said card under the rules and regulations of a labor union within this state, shall be guilty of a misdemeanor.

**Conflicting acts repealed.**

Sec. 2. All acts, and parts of acts, in conflict with the provisions of this act, are hereby repealed.

## LARCENY.

*An Act to more fully define the crime of larceny.*

[Approved March 6, 1872; Stats. 1871-72, p. 282.]

§ 1. Grand larceny.

§ 2. Petit larceny.

**Grand larceny.**

Section 1. Every person who shall convert any manner of real estate of the value of fifty dollars and upwards into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

**Petit larceny.**

Sec. 2. Every person who shall convert any manner of real estate of the value of under fifty dollars into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

**Severing and removing part of realty: See Pen. Code, § 495.**

*An Act supplementary to an act entitled "An Act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.*

[Approved March 20, 1872; Stats. 1871-72, p. 435.]

**Grand larceny.**

Section 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle-box, or sulphurate [sulphuret-] machine any gold-dust, amalgam, or quicksilver, the property  
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of another, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years.

**Act takes effect when.**

Sec. 2. This act shall be in force from and after its passage.

Remains in force: See *People v. Salvador*, 71 Cal. 16.

## MASTER AND SERVANT.

*An Act to prevent misrepresentations of conditions of employment, making it a misdemeanor to misrepresent the same and providing penalties therefor.*

[Approved March 20, 1903; Stats. 1903, p. 269.]

- § 1. False representations of conditions of employment.
- § 2. Penalty.
- § 3. Act takes effect when.

**False representations of conditions of employment.**

Section 1. It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, doing business in this state directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this state or to change from any place in any state, territory, or country to any place in this state, to work in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it, or the existence or non-existence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer or employers and the persons then or last theretofore engaged in the performance of the labor for which the employee is sought.

**Penalty.**

Sec. 2. Any violation of section one or section two hereof shall be deemed a misdemeanor, and shall be punished by a fine of not ex-



ceeding two thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

**Act takes effect when.**

Sec. 3. This act shall take effect on the date of its passage.

## OFFICERS.

*An Act relating to the intoxication of officers.*

[Approved April 15, 1880; Stats. 1880, p. 77.]

**Intoxication of officers. Misdemeanor. Penalty.**

Section 1. Any officer of a town, village, city, county, or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; provided, such acceptance shall have been necessary to make the office vacant.

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

## OLIVE-OIL.

*An Act to regulate the sale of imitation olive-oil, and to repeal an act entitled "An Act to regulate the sale of olive-oil," approved March 10, 1891.*

[Approved March 28, 1893; Stats. 1893, p. 210.]

- § 1. Imitation oil, what constitutes.
- § 2. Imitation oil to be labeled. Letters, kind of type to be used. Names of ingredients to be given.
- § 3. Not to be consigned unless marked. Proviso.
- § 4. Not to be in possession.
- § 5. Not to be sold as pure olive-oil. Purchaser to be informed of imitation oil. Statement, what to contain.

- § 6. Presumption as to persons having imitation oil.
- § 7. False representation as to imitation oil.
- § 8. Penalty for violation of provisions of this act.
- § 9. Who to enforce.
- § 10. Certain act repealed.

**Imitation oil. What constitutes.**

Section 1. That for the purpose of this act every article, substance, or compound, or oil other than that extracted solely from the fruit of the olive-tree, made in the semblance of olive-oil extracted solely from the fruit of the olive-tree, is hereby declared to be imitation olive-oil.

**Imitation oil to be labeled. Letters, kind of type to be used. Names of ingredients to be given.**

Sec. 2. Each person who manufactures imitation olive-oil shall place upon every bottle, can, or other vessel containing such imitation oil, a label, with the words "imitation olive-oil" printed thereon in capital letters, in a clear and durable manner, in the English language, in plain type, designated and known as twenty-four-point letter type [sic] (two-line pica), of a Gothic face; said label shall also state plainly the name and address of the manufacturer or compounder, the name and place where manufactured and put up, and also the names and actual percentages of the different ingredients contained in each bottle, can, or vessel.

**Not to be consigned unless marked. Proviso.**

Sec. 3. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any imitation olive-oil, unless the same be marked as provided in section two of this act; and no carrier shall knowingly receive, for the purpose of forwarding or transporting, any imitation olive-oil, unless it shall be marked as hereinbefore provided, consigned, and by the carrier receipted for, as imitation olive-oil; provided, that this act shall not apply to any goods in transit between foreign countries and across the state of California.

**Not to be in possession.**

Sec. 4. No person shall knowingly have in his possession or under his control, any imitation olive-oil, unless the bottle, can, or vessel,

or other package containing the same, be clearly marked, as provided in section two of this act.

**Not to be sold as pure olive-oil. Purchaser to be informed of imitation oil. Statement, what to contain.**

Sec. 5. No person, by himself or another, shall knowingly sell or offer for sale imitation olive-oil under the name of or under the pretense that the same is pure olive-oil; and no person, by himself or another, shall knowingly sell any imitation olive-oil unless he shall inform the purchaser at the time of sale that the same is imitation olive-oil, and shall deliver to the purchaser at the time of sale a statement, clearly printed in the English language, which shall refer to the article sold, and which shall contain, in plain type, designated and known as twenty-four-point letter type [sic] (two-line pica), of a Gothic face, in capital letters, the words "imitation olive-oil," and shall give the name and place of business of the manufacturer or compounder.

**Presumption as to persons having imitation oil.**

Sec. 6. Every person having possession or control of any imitation olive-oil, which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation olive-oil.

**False representation as to imitation oil.**

Sec. 7. No person shall expose for sale any oil bearing the semblance of olive-oil, manufactured out of the state, and represent that it is manufactured in this state, nor shall offer for sale any such oil upon the receptacle of which is any cut, design, or mark intended to convey the belief that such is manufactured in this state.

**Penalty for violation of provisions of this act.**

Sec. 8. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both fine and imprisonment, as the court may direct.

**Who to enforce.**

Sec. 9. It shall be the duty of the state board of horticulture and the state analyst to enforce the provisions of this act.

**Certain act repealed.**

Sec. 10. An act entitled "An Act to regulate the sale of olive-oil," approved March tenth, eighteen hundred and ninety-one, is hereby repealed.

**POISON.**

*An Act to regulate the sale of poisons in the state of California and providing a penalty for the violation thereof.*

**Amendment of title of act.** The original title of this act was amended in 1909 by adding the words "and use" after "to regulate the sale."

[1. Approved March 6, 1907; Stats. 1907, p. 124. 2. Amended March 19, 1909; Stats. 1909, p. 422.]

- § 1. Poison packages to be labeled. Purchaser must be put on inquiry. Sales to be recorded. Form of record.
- § 2. Form of label.
- § 3. State board of pharmacy to adopt schedule of antidotes. Entries to be in English.
- § 4. State board may prohibit sale of any poison.
- § 5. Duty of wholesale dealers.
- § 6. Duty of district attorney.
- § 7. Penal section. Schedule of poisons. Schedule "A." Schedule "B."
- § 8. Sale of opium, etc. Written order to be retained. As to wholesalers. Habitual users of opium, etc.
- § 9. Drugs exempted from registration.
- § 10. Conflicting acts repealed.

**Poison packages to be labeled. Purchaser must be put on inquiry. Sales to be recorded. Form of record.**

Section 1. It shall be unlawful for any person to vend, sell, give away or furnish either directly or indirectly, any poisons enumerated in schedules "A" and "B" in section seven of this act set forth as hereinafter set forth in this act, without labeling the package, box, bottle or paper in which said poison is contained, with the name of the article, the word "poison" and the name and place of business of the person furnishing the same. Said label shall be substantially in the form hereinafter provided. It shall be unlawful to sell or deliver

any of the poisons named in schedule "A" or any other dangerously poisonous drug, chemical, or medicinal substance, which may from time to time be designated by the state board of pharmacy of California, unless on inquiry it is found that the person desiring the same is aware of its poisonous character, and it satisfactorily appears that it is to be used for a legitimate purpose. It shall be unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons thus enumerated. Printed notice of all such additions to the schedule of poisons named and provided for in this section, and the antidote adopted by the board of pharmacy for such poisons, shall be given to all registered pharmacists with the next following renewal of their certificates. It shall be unlawful to sell or deliver any poison included in schedule "A" or the additions thereto, without making or causing to be made, an entry in a book kept solely for that purpose, stating the date and hour of sale, and the name, address and signature of the purchaser, the name and quantity of the poison sold, the statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a duly registered pharmacist.

Said book shall be in form substantially as follows:

Date and Hour.	Name of Purchaser.	Residence.	Kind and Quality.	Purpose of Use.	Signature of Druggist.	Signature of Purchaser.
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This book shall always be open for inspection by the proper authorities, and shall be preserved for at least five (5) years after the date of the last entry therein. [Amendment. Approved March 19, 1909; Stats. 1909, p. 423.]

#### Form of label.

Sec. 2. The label required by this act, to be placed on all packages of poison, shall be printed upon red paper in distinct white letters, or in distinct red letters upon white paper, and shall contain the word "poison," the "vignette" representing the skull and cross-bones, and the name and address of the person or firm selling the same. The name of an antidote if any there be for the poison sold, shall also be upon the package. No poison shall be sold or delivered to any person who is less than eighteen years of age.

**State board of pharmacy to adopt schedule of antidotes. Entries to be in English.**

Sec. 3. It shall be the duty of the state board of pharmacy to adopt a schedule of what in their judgment are the most suitable common antidotes for the various poisons usually sold. After the board has adopted the schedule of antidotes as herein provided for, they shall have the same printed and shall forward by mail one copy to each person registered upon their books, and to any other person applying for the same. The particular antidote adopted (and no other) shall appear on the poison label, provided for in section 2 of this act, or be attached to the package containing said poison. The board shall have power to revise and amend the list of antidotes from time to time, as to them may seem advisable. The entries in the poison-book and the printed or written matter provided for in section 2 and 3 of this act, shall be in the English language, provided that the vendor of said poison may enter the same in any foreign language he may desire, in addition to said entry and label in English.

**State board may prohibit sale of any poison.**

Sec. 4. When in the opinion of the state board of pharmacy, it is in the interest of the public health, they are hereby empowered to further restrict, or prohibit the retail sale of any poison by rules, not inconsistent with the provisions of this act, by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board, upon request, to furnish any dealer with a list of all articles, preparations and compounds, the sale of which is prohibited or regulated by this act.

**Duty of wholesale dealers.**

Sec. 5. Wholesale dealers and pharmacists shall affix or cause to be affixed to every bottle, box, parcel or other inclosure of an original package containing any of the articles named in schedule "A" the additions thereto, or in sections 8 and 9 of this act, a suitable label, or brand with the word "poison" but they are hereby exempted from the registration of the sale of such articles when sold at wholesale to a registered pharmacist, physician, dentist or veterinary surgeon duly licensed to practice in the state; provided, that the provisions

of this act shall not apply to the sale of such upon the prescriptions of practicing physicians, dentists or veterinary surgeons who are duly licensed to practice in this state.

**Duty of district attorney.**

Sec. 6. It is hereby made the duty of the district attorney of the county wherein any violation of this act is committed, to conduct all actions and prosecutions for the same, at the request of the board of pharmacy.

**Penal section. Schedule of poisons. Schedule "A." Schedule "B."**

Sec. 7. Any person violating any of the provisions of section eight of this act shall upon conviction be punished as follows, viz.: for the first offense by a fine of not less than one hundred dollars, and not to exceed two hundred and fifty dollars, or by imprisonment for not more than one hundred days or by both fine and imprisonment; for the second offense by a fine of not less than two hundred and fifty dollars, and not to exceed five hundred dollars, or by imprisonment for not more than two hundred days or by both such fine and imprisonment; and for the third offense by imprisonment in the state prison for not less than one year and not more than five years. Any person violating any of the provisions of this act, except those contained in section eight, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than thirty dollars, nor more than one hundred dollars, or by imprisonment for not more than fifty days or by both such fine and imprisonment. All fines collected shall be paid seventy-five (75%) per cent to the state board of pharmacy, and twenty-five (25%) per cent to the county treasurer of the county in which the prosecution is conducted.

The following is schedule "A" referred to in section one, viz.:

Schedule "A," arsenic, its compounds and preparations, corrosive sublimate and other poisonous derivatives of mercury, corrosive-sublimate tablets, antiseptic tablets containing corrosive sublimate, cyanide of potassium, strychnine, hydrocyanic acid, oils of croton, rue and tansy, phosphorus and its poisonous derivatives or compounds, compound solution of cresol, lysol, strophanthus or its preparations, aconite, belladonna, nux vomica, veratrum viride, their preparations, alkaloids or derivatives.

The following is schedule "B": Hydrochloric or muriatic acid, nitric acid, oxalic acid, sulphuric acid, bromide, chloroform, cowhage, creosote, ether, solution of formaldehyde or formalin; cantharides, cocculus indicus, Indian hemp or their preparations; iodine, or its tinctures, oils of savin and pennyroyal, tartar emetic and other poisonous derivatives of antimony, sugar of lead, sulphate of zinc, wool [wood-]alcohol. [Amendment. Approved March 19, 1909; Stats. 1909, p. 423.]

**Sale of opium, etc. Written order to be retained. As to wholesalers.  
Habitual users of opium, etc.**

Sec. 8. It shall be unlawful for any person, firm, or corporation to sell, furnish or give away, or offer to sell, furnish or give away, or to have in their or his possession any cocaine, opium, morphine, codeine, heroin or chloral hydrate or any salt derivative or compound of the foregoing substances, or any preparation or compound containing any of the foregoing substances or their salts, derivatives or compounds, except upon the written order or prescription of a physician, dentist or veterinary surgeon licensed to practice in this state, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or if ordered by a veterinary surgeon shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the articles ordered, or prescribed, and it shall not be again compounded or dispensed if each fluid or avoirdupois ounce contains more than eight grains of opium, or one grain of morphine, or two grains of codeine, or half a grain of heroin or sixty grains of chloral hydrate, except upon the written order of the prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officers of the law; provided, that the above provisions shall not apply to preparations sold or dispensed without a physician's prescription, containing less than two grains of opium, or one quarter grain of morphine or one half grain of



codeine, or one sixth grain heroin, or ten grains chloral hydrate in one fluid ounce, or, if a solid preparation, in one avoirdupois ounce; and provided further, that the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to pharmacies, as defined in section one of an act entitled: "An Act to regulate the practice of pharmacy in the state of California and to provide a penalty for the violation thereof; and for the appointment of a board to be known as the California state board of pharmacy, approved March 20th, 1905, and acts amendatory thereto;" or physicians, nor to each other, nor to the sale at retail by retail pharmacies, to physicians, dentists, or veterinary surgeons duly licensed to practise in this state.

It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish to or to prescribe for the use of any habitual user of the same, any cocaine, opium, morphine, codeine, heroin, or chloral hydrate, or any salt, derivative or compound of the foregoing substances, or any preparation containing any of the foregoing substances or their salts, derivatives or compounds, and it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any veterinary surgeon to prescribe any of the foregoing substances for the use of any human being; provided, however, that the provisions of this section shall not be construed to prevent any duly licensed physician from furnishing or prescribing in good faith for the habitual user of any narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the purposes of this act. [Amendment. Approved March 19, 1909; Stats. 1909, p. 424.]

#### **Drugs exempted from registration.**

Sec. 9. The sale or furnishing of carbolic acid (phenol) in quantities of less than one pound is prohibited unless upon the prescription of a physician, dentist or veterinary surgeon duly licensed to practice in this state; but this prohibition shall not apply to solutions of carbolic acid (phenol) containing not over ten per cent of

the carbolic acid (phenol) and not less than ten per cent of ethyl alcohol. All sales of carbolic acid (phenol) thus diluted with water and ethyl alcohol so as to contain not more than ten per cent of carbolic acid (phenol) can be made under the same conditions as the drugs enumerated in schedule "B" as found in section seven, but sales of carbolic acid (phenol) containing more than ten per cent of said acid shall be registered subject to the same regulations as the poisons enumerated in schedule "A" as found in section 7. [Amendment. Approved March 19, 1909; Stats. 1909, p. 425.]

#### Conflicting acts repealed.

Sec. 10. All acts and parts of acts in conflict with this act are hereby repealed.

### POLICE.

*An Act to create a police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the state.*

[1. Approved March 4, 1889; Stats. 1889, p. 56. 2. Amended March 31, 1891; Stats. 1891, p. 287. 3. Amended March 31, 1891; Stats. 1891, p. 469. 4. Amended March 2, 1897; Stats. 1897, p. 52.]

- § 1. Who to constitute board of trustees of police relief or pension fund.
- § 2. Organization and officers.
- § 3. Qualifications to receive pension.
- § 4. Physical disability. Restoration.
- § 5. Evidence of disability to be filed.
- § 6. Pension to family.
- § 7. Stipulated sum to family.
- § 8. Re-examination.
- § 9. Forfeiture of pension.
- § 10. Meetings, and duties of board.
- § 11. Other powers of board.
- § 12. Annual payments into fund by supervisors.
- § 13. Mergement of other insurance funds.
- § 14. Reports.
- § 15. Conflicting acts repealed.
- § 16. Act takes effect when.

#### Who to constitute board of trustees of police relief or pension fund.

Section 1. The chairman of the board of supervisors of the county, city and county, city, or incorporated town in which there is no board

of police commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of police, and their successors in office, are hereby constituted a board of trustees of the police relief or pension fund of the police department, to provide for the disbursement of the same and to designate the beneficiaries thereof, as hereinafter directed, which board shall be known as the "Board of Police Pension Fund Commissioners;" provided, however, that where there is in any county, city and county, city, or town, a board of police commissioners, then such body shall constitute said board of trustees of the police relief and pension fund of the police department. [Amendment. Approved March 31, 1891; Stats. 1891, p. 469.]

#### **Organization and officers.**

Sec. 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town shall be ex officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund, and to order payments therefrom in pursuance of the provisions of this act. They shall report annually, in the month of June, to the board of supervisors, or other governing authority of the county, city and county, city, or incorporated town, the condition of the police relief and pension fund, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them. [Amendment. Approved March 31, 1891; Stats. 1891, p. 469.]

#### **Qualifications to receive pension.**

Sec. 3. Whenever any person at the taking effect of this act, or thereafter, shall have been duly appointed or selected, and sworn, and have served for twenty years, or more, in the aggregate, as a member, in any capacity or any rank whatever, of the regularly constituted police department of any such county, city and county, city, or town which may hereafter be subject to the provisions of this act, said board may, if it see fit, order and direct that such person, after becoming sixty years of age, be retired from further service in such police department, and from the date of the making of such order the service of such person in such police department shall cease, and such person so retired shall thereafter, during his lifetime, be paid

from such fund a yearly pension equal to one half of the amount of salary attached to the rank which he may have held in said police department for the period of one year next preceding the date of such retirement. [Amendment. Approved March 2, 1897; Stats. 1897, p. 52.]

#### **Physical disability. Restoration.**

Sec. 4. Whenever any person, while serving as a policeman in any such county, city and county, city, or town, shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duty as such policeman, said board may, upon his written request, or without such request, if it deem it to be for the good of said police force, retire such person from said department, and order and direct that he shall be paid from said fund, during his lifetime, a yearly pension equal to one half of the amount of salary attached to the rank which he may have held on such police force at the date of such retirement, but on the death of such pensioner his heirs or assigns shall have no claim against or upon such police relief or pension fund; provided, that whenever such disability shall cease such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement. [Amendment. Approved March 2, 1897; Stats. 1897, p. 52.]

#### **Evidence of disability to be filed.**

Sec. 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city, or town physician (if there be one), and two regularly licensed practicing physicians of such county, city and county, city, or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

#### **Pension to family.**

Sec. 6. Whenever any member of the police department of such county, city and county, city, or town shall lose his life while in the

performance of his duty, leaving a widow, or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one third the amount of the salary attached to the rank which such member held in said police department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age; provided, if such widow, or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund.

**Stipulated sum to family.**

Sec. 7. Whenever any member of the police department of such county, city and county, city, or town, shall, after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund. [Amendment. Approved March 31, 1891; Stats. 1891, p. 287.]

**Re-examination.**

Sec. 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference thereto; and all members of the police force who may be retired under the provisions of this act shall report to the chief of police of the county, city and county, city, or town where so retired, on the first Mondays of April, July, October, and January of each year; and in cases of great public emergency may be assigned to and shall perform such duty as said chief of police may direct; and such persons shall have no claim against the county, city and county, city, or town for payment for such duty so performed.

**Forfeiture of pension.**

Sec. 9. When any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall become a non-resident of this state, or shall fail to report himself for examination for duty as required herein, unless

excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance, or benefit under this act.

#### **Meetings, and duties of board.**

Sec. 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its president; it shall biennially select from its members a president and secretary; it shall issue warrants, signed by its president and secretary, to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall at each quarterly meeting send to the treasurer of the county, city and county, city, or town, and to the auditor of such county, city and county, city, or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, and which shall be known as "the police relief and pension fund" book. When such list has been entered by the auditor he shall transmit the same to the board of supervisors, or other governing authority of such county, city and county, city, or town, which board or authority shall order the payment of the amounts named therein out of "the police relief and pension fund." A majority of all the members of said board herein provided for shall constitute a quorum and have power to transact business.

#### **Other powers of board.**

Sec. 11. The board herein provided for shall, in addition to other powers herein granted, have power:

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before

notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary, and to provide for the payment from said fund of all its necessary expenses, including secretary hire and printing; provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, in conformity with the provisions of this act.

**Annual payments into fund by supervisors.**

Sec. 12. The board of supervisors, or other governing authority, of any county, city and county, city, or town shall, for the purposes of said "police relief and pension fund" hereinbefore mentioned, direct the payment annually, and when the tax levy is made, into said fund, of the following moneys:

First—Not less than five nor more than ten per centum of all moneys collected and received from licenses for the keeping of places wherein spirituous, malt, or other intoxicating liquors are sold.

Second—One half of all moneys received from taxes or from licenses upon dogs.

Third—All moneys received from fines imposed upon the members of the police force of said county, city and county, city, or town, for violation of the rules and regulations of the police department.

Fourth—All proceeds of sales of unclaimed property.

Fifth—Not less than one fourth nor more than one half of all moneys received from licenses from pawnbrokers, billiard-hall keepers, second-hand dealers, and junk-stores.

Sixth—All moneys received from fines for carrying concealed weapons.

Seventh—Twenty-five per centum of all fines collected in money for violation of county, city and county, city, or town ordinances.

Eighth—All rewards given or paid to members of such police force, except such as shall be excepted by the chief of police.

Ninth—The treasurer of any county, city and county, city, or town shall retain from the pay of each member of police department the sum of two dollars per month, to be forthwith paid into said police relief and pension fund, and no other or further retention or deduc-

tion shall be made from such pay for any other fund or purpose whatever.

#### **Mergement of other insurance funds.**

Sec. 13. Any police, life, and health insurance fund, or any fund provided by law, heretofore existing in any county, city and county, city, or town, for the relief or pensioning of police-officers, or their life or health insurance, or for the payment of a sum of money on their death, shall be merged with, paid into, and constitute a part of the fund created under the provisions of this act; and no person who has resigned or been dismissed from said police department shall be entitled to any relief from such fund; provided, that any person who, within one year prior to the passage of this act, has been dismissed from the police department for incompetency or inefficiency, and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve or more years as such member, shall be entitled to all the benefits of this act.

#### **Reports.**

Sec. 14. On the last day of June of each year, or as soon thereafter as practicable, the auditor of such county, city and county, city, or town shall make a report to the board of supervisors, or other governing authority of such county, city and county, city, or town, of all moneys paid out on account of said fund during the previous year, and of the amount then to the credit of the "police relief and pension fund," and all surplus of said fund then remaining in said fund exceeding the average amount per year paid out on account of said fund during the three years next preceding, shall be transferred to and become a part of the general fund of every such county, city and county, city, or town, and no longer under the control of said board, or subject to its order. Payments provided for in this act shall be made quarterly, upon proper vouchers.

#### **Conflicting acts repealed.**

Sec. 15. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.



**Act takes effect when.**

**Sec. 16.** This act shall take effect from and after its passage.

**Rights of officer in fund:** See *Pennie v. Reis*, 132 U. S. 464.

*An Act to provide for the compensation of the chief and captain of police and police-officers, in cities in the state of California containing not less than ten thousand and not exceeding twenty-five thousand inhabitants.*

[Approved March 28, 1898; Stats. 1898, p. 280.]

**Act unconstitutional.** This act was declared unconstitutional in *Darcy v. Mayor of San José*, 104 Cal. 642.

*An Act to increase the police force of the various cities, and cities and counties, and towns, of the state, and to provide for the appointment of such extra police-officers, and for the payment of their salaries.*

[Approved February 24, 1891; Stats. 1891, p. 10.]

§ 1. Police forces. How appointed.

§ 2. Salaries.

§ 3. Who included in terms "common council," "board of trustees," and "board of supervisors."

§ 4. Act takes effect when.

**Police forces. How appointed.**

Section 1. The board of supervisors, board of trustees, or common council of a city, or city and county, or town, of this state, of the first, second, or fourth classes, are hereby authorized and empowered to increase the police force of their respective cities, and cities and counties, or towns, from time to time, as may be deemed necessary by said common council, board of trustees, or board of supervisors; provided, that the police force in any city, or city and county, shall not exceed in the aggregate, at any time, one member for every five hundred inhabitants of such city, or city and county; provided further, that in cities of the third class the police force shall not exceed in the aggregate, at any time, one member for every one thousand inhabitants of said cities, according to the latest census of the United

States; said additional police force to be appointed by the board of police commissioners or other board or authority now by law empowered to appoint police-officers in their respective cities, or cities and counties, or towns.

#### **Salaries.**

Sec. 2. The salary of additional police-officers hereby authorized shall be of the same amounts for each officer as is now paid by law to the other members of such police force in their respective cities, or cities and counties, or towns; and said additional police-officers shall be paid at the same time and in the same manner and out of the same fund as the other members of their respective police forces are now or shall hereafter be paid.

**Who included in terms "common council," "board of trustees," and "board of supervisors."**

Sec. 3. The terms common council, board of trustees, and board of supervisors are hereby declared to include any body or board which, under the law, is the legislative department of the government of any city, or city and county, or towns.

#### **Act takes effect when.**

Sec. 4. This act shall be in force and effect from and after its passage.

*An Act authorizing and requiring boards or commissions having the management and control of paid police force to grant the members thereof yearly vacations.*

[1. Approved March 10, 1891; Stats. 1891, p. 47. 2. Amended February 28, 1907; Stats. 1907, p. 62.]

#### **Leaves of absence of police-officers, with pay.**

Section 1. In every city or city and county of this state where there is a regular organized paid police force, the board of supervisors, common council, commissions or other body having the management and control of the same must once in every year provide for granting every member thereof a leave of absence from active duty for a period of fifteen days. Leaves of absence so granted must be arranged

by said board or commission so as not to interfere with the police protection of any such city, or city and county; and leaves of absence granted in case of sickness or in consideration of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this act. No deduction must be made from the pay of any police-officer granted leave of absence under the provisions of this act. [Amendment. Approved February 28, 1907; Stats. 1907, p. 62.]

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act regulating the hours of service on regular duty by members of the police department of cities of the first class, cities and counties, cities of the first and one half class, and cities of the second class.*

[Approved February 27, 1903; Stats. 1903, p. 51.]

**Hours of duty of police-officers.**

Section 1. In all cities of the first class, cities and counties, cities of the first and one half class, and cities of the second class of this state where a regular police department is maintained, patrol captains, lieutenants, sergeants, and regular officers shall be required to serve on duty not longer than eight hours in every twenty-four hours; provided, that in case of riot or other emergency, every attaché of the police department shall perform such duty and for such time as the directing authority of the department shall require.

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act to provide for the appointment of policemen, with the powers of peace-officers, to serve upon the premises, cars or boats of railroad and steamship companies.*

[Approved March 23, 1901; Stats. 1901, p. 666.]

- § 1. Governor to appoint policemen for railroad and steamboat corporations.
- § 2. Officers to wear visible shield.
- § 3. Act takes effect when.

**Governor to appoint policemen for railroad and steamboat corporations.**

Section 1. The governor of the state of California is hereby authorized and empowered, upon the application of any railroad or steamboat company, to appoint and commission during his pleasure one or more persons designated by such company and to serve at the expense of such company, as policeman or policemen, with the powers of peace-officers, and who, after being duly sworn, may act as such policeman or policemen upon the premises, cars or boats of such company. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority.

**Officers to wear visible shield.**

Sec. 2. Every such policeman shall, when on duty, wear in plain view a shield bearing the words "railroad police," or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

**Act takes effect when.**

Sec. 3. This act shall take effect immediately.

*An Act relating to senior rights of members of paid police departments of counties, cities and counties, cities or towns.*

[Approved February 23, 1907; Stats. 1907, p. 46.]

**Police department. Senior rights in assignment of duty.**

Section 1. Whenever a member of a paid police department of any county, city and county, city or town shall have served ten years as a member of such police department, he shall be entitled to senior rights in assignment of duties, and shall be entitled to day-work in prefer-

ence to members of such department, who have served less than ten years.

**Act takes effect when.**

**Sec. 2.** This act shall take effect immediately.

## PUBLIC HEALTH.

*An Act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.*

[1. Approved April 1, 1878; Stats. 1877-78, p. 1050. 2. Amended March 18, 1889; Stats. 1889, p. 189.]

- § 1. Disinterring bodies unlawful without permit.
- § 2. Permits granted upon what. Contents of permit.
- § 3. Misdemeanor. Transportation of bodies, etc.
- § 4. Misdemeanor.
- § 5. Reward for information.
- § 6. Removal of remains of deceased persons.
- § 7. Act takes effect when.

### **Disinterring bodies unlawful without permit.**

Section 1. It shall be unlawful to disinter or exhume from a grave, vault, or other burial-place, the body or remains of any deceased person, unless the person or persons so doing shall first obtain, from the board of health, health-officer, mayor, or other head of the municipal government of the city, town, or city and county where the same are deposited, a permit for said purpose. Nor shall such body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be removed or transported in or through the streets or highways of any city, town, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain, from the board of health or health-officer (if such board or officer there be), and from the mayor or other head of the municipal government of the city or town, or city and county, a permit, in writing, so to remove or transport such body or remains in and through such streets and highways.

### **Permits granted upon what. Contents of permit.**

**Sec. 2.** Permits to disinter or exhume the bodies or remains of deceased persons, as in the last section, may be granted, provided the

person applying therefor shall produce a certificate from the coroner, the physician who attended such deceased person, or other physician in good standing cognizant of the facts, which certificate shall state the cause of death or disease of which the person died, and also the age and sex of such deceased; and provided, further, that the body or remains of deceased shall be inclosed in a metallic case or coffin, sealed in such manner as to prevent, as far as practicable, any noxious or offensive odor or effluvia escaping therefrom, and that such case or coffin contains the body or remains of but one person, except where infant children, of the same parent or parents, or parent and children are contained in such case or coffin. And the permit shall contain the above conditions and the words "Permit to remove and transport the body of — —, age —, sex —, [ " ] and the name, age, and sex shall be written therein. The officer of the municipal government of the city or town, or city and county, granting such permit, shall require to be paid for each permit the sum of ten dollars, to be kept as a separate fund by the treasurer, and which shall be used in defraying expenses of and in respect to such permits, and for the inspection of the metallic cases, coffins, and inclosing boxes herein required; and an account of such moneys shall be embraced in the accounts and statements of the treasurer having the custody thereof.

**Misdemeanor. Transportation of bodies, etc.**

Sec. 3. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed from a grave, vault, or other receptacle or burial-place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body, bones, or remains on any vehicle, car, barge, boat, ship, steamship, steamboat, or vessel, for transportation in or from this state, unless the permit to transport the same is first received, and is retained in evidence by the owner, driver, agent, superintendent, or master of the vehicle, car, or vessel.

**Misdemeanor.**

Sec. 4. Any person or persons who shall move or transport, or cause to be moved or transported, on or through the streets or highways of any city or town, or city and county, of this state, the body or remains of a deceased person, which shall have been disinterred or exhumed without a permit, as described in section two of this act, shall be guilty of a misdemeanor, and be punishable as provided in section three of this act.

**Reward for information.**

Sec. 5. Any person who shall give information to secure the conviction of any person or persons for the violation of the provisions of this act, shall be entitled to receive the sum of twenty-five dollars, to be paid from the fund collected from fines imposed and accruing under this act.

**Removal of remains of deceased persons.**

Sec. 6. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons from one place of interment to another cemetery or place of interment within this state; provided, that no permit shall be issued for the disinterment or removal of any body unless such body has been buried for one year or more, without the written consent of the mayor, chairman of the board of supervisors, or city council of any municipality of the state. [Amendment. Approved March 13, 1889; Stats. 1889, p. 139. In effect immediately.]

**Act takes effect when.**

Sec. 7. This act shall take effect and be in force from the thirtieth day after its passage and approval.

## SCHOOL OF INDUSTRY.

Act relating to commitments to school of industry: See post, Appendix, tit. "School of Reform."

*An Act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor.*

[1. Approved March 11, 1889; Stats. 1889, p. 100. 2. Amended February 27, 1898; Stats. 1898, p. 39. 3. Amended April 16, 1909; Stats. 1909, p. 964.]

- § 1. Preston School of Industry.
- § 2. Appropriation.
- § 3. Government vested in three trustees. Term of office.
- § 4. To procure site.
- § 5. Adoption of plans for grounds and buildings.
- § 6. No member to be interested in contracts.
- § 7. Construction of act.
- § 8. Same.
- § 9. Military discipline. Uniform.
- § 10. Expenses of trustees to be paid. Superintendent's salary. Other salaries.
- § 11. Board to elect officers.
- § 12. Instruction.
- § 13. Bond of superintendent. Salary. Appointments by. Duties.
- § 14. To investigate workings of similar institutions. [Repealed.]
- § 15. Commitments.
- § 16. Approval of commitments.
- § 17. Dismissals.
- § 18. Paroles.
- § 19. Incurable boys, return of to court.
- § 20. Transfer to, from state prison.
- § 21. Aiding escape.
- § 22. Duties of trustees. Contracts. Security and bond of bidder.
- § 23. Proclamation of governor.
- § 24. Controller.
- § 25. Effect of other acts in conflict.
- § 26. Sheriff's fees.
- § 27. Construction of act.
- § 28. Act takes effect when.

Effect of act. See note at end of this statute.

### Preston School of Industry.

Section 1. There shall be established at or within a convenient distance from Ione City, in the county of Amador, in said state, an



educational institution to be designated as the Preston School of Industry.

**Appropriation.**

Sec. 2. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing and preparing grounds for the erection of buildings thereon, for the purchase of the necessary furniture, machinery, and supplies, and for the payment of the current expenses of said school.

**Government vested in three trustees. Term of office.**

Sec. 3. The general government and supervision of said school shall be vested in a board of trustees, consisting of three citizens of the state of California, who shall be appointed by the governor. The members of said board shall hold their offices for the respective terms of two, three, and four years, from the first day of July, eighteen hundred and ninety-three, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter, upon the expiration of such terms, there shall be one of said board appointed, whose term of office shall be continued four years, and until his successor is appointed and qualified. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same. [Amendment. Approved February 27, 1893; Stats. 1893, p. 39. In effect July 1, 1893.]

**To procure site.**

Sec. 4. The board shall, with all convenient dispatch, select and establish a site at some suitable place in said county for said institution, and procure the right of way for suitable drainage; said site to contain not less than one hundred acres nor more than three hundred acres of land, to have water facilities sufficient for the uses of said school, and for power in operating machinery; the land to be of a quality suitable for general farming purposes, and adapted to the cultivation of vines and fruit-trees. The land so set apart by said purchase shall hereafter be used exclusively for the occupancy and purposes of said school. It shall be indicated by fixed corners and definite boundaries. A description thereof, together with the deed

therefor, shall be filed with the secretary of state at his office within thirty days after the purchase of the same.

**Adoption of plans for grounds and buildings.**

Sec. 5. Thereafter the board shall cause to be prepared and shall adopt plans for the grounds, buildings, and fixtures necessary for such an institution, of such form, dimensions, and style as to it shall seem best adapted to the purposes thereof. In the preparation of such plans, and in the construction of the buildings, it may employ a competent architect at a reasonable compensation.

**No member to be interested in contracts.**

Sec. 6. No member of the board or employee of the institution shall be interested in any contract or enterprise in connection with said school. [Amendment. Approved February 27, 1893; Stats. 1893, p. 39. In effect July 1, 1893.]

**Construction of act.**

Sec. 7. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless specially or otherwise herein provided; and none of the provisions of an act entitled "An Act to regulate contracts on behalf of the state in relation to erections of buildings," approved March twenty-third, eighteen hundred and seventy-six, or any other act, unless herein specially referred to, shall apply to or govern or limit this act, or any of the powers or duties in this act conferred upon said board.

**Same.**

Sec. 8. Nothing in this act contained shall be so construed as to permit any convict or convicts, undergoing sentence in either of the state prisons of California, to associate with or to be so employed as to mingle with any person or persons undergoing commitment in the said school.

**Military discipline. Uniform.**

Sec. 9. The said school shall be conducted on such plan as to the board may seem best calculated to carry out the intentions of this act, and its inmates shall be subject to military discipline, including daily drill. They shall be clothed in military uniform of such pattern

and material as may be prescribed by the board, but under no circumstances shall such inmates be clothed in convict stripes while undergoing commitment in said school. [Amendment. Approved February 27, 1893; Stats. 1893, p. 39. In effect July 1, 1893.]

**Expenses of trustees to be paid. Superintendent's salary. Other salaries.**

Sec. 10. The members of the board shall receive no compensation for their services, but shall be allowed their reasonable expenses incurred while in the discharge of their official duties. The superintendent shall receive a salary, to be fixed by the board, not to exceed three thousand dollars per annum. The military instructor shall receive a salary, to be fixed by the board, not to exceed twelve hundred dollars per annum. The secretary and commissary shall each receive a salary, to be fixed by the board, not to exceed fifteen hundred dollars per annum. The salary of no other officer or employee of the school shall exceed twelve hundred dollars per annum. The power of the board to fix the compensation of the officers and employees, as provided in section twelve of this act, shall be subject to these limitations. [Amendment. Approved February 27, 1893; Stats. 1893, p. 39. In effect July 1, 1893.]

**Board to elect officers.**

Sec. 11. The board shall elect a superintendent, a military instructor, and a secretary. The superintendent and secretary shall give such bonds for the faithful performance of their duties as the board shall determine. The bond of the superintendent shall be for a sum of not less than ten thousand dollars, and that of the secretary of not less than five thousand dollars. The military instructor must be a man who is a good disciplinarian and skilled in military tactics. He shall receive from the governor a commission with the rank of major. He shall perform such duties and receive such salary as the board may prescribe. The board shall meet once in three months for the transaction of business. Special meetings may be called by the president when deemed necessary.

**Instruction.**

Sec. 12. The board shall cause to be organized and maintained a department of instruction for the inmates of said school, with a course

of study corresponding as far as practicable with the course of study in the public schools of this state, but the course shall not be higher than the course prescribed in grammar schools. They shall adopt a system of government, embracing such laws and regulations as are necessary for the guidance of the officers and employees, for the regulation of the hours of study and labor, for the preservation of order, for the enforcement of discipline and military training, for the preservation of health, and for the industrial training of the inmates. The ultimate purpose of all such instruction, discipline, and industries shall be to qualify the inmates for honorable and profitable employment after their release from the institution, rather than to make said institution self-sustaining. The board shall also determine the number of officers and employees required, and shall prescribe their duties and fix the amount of their compensation.

**Bond of superintendent. Salary. Appointments by. Duties.**

Sec. 13. The superintendent, before entering upon the discharge of his duties, shall make and file with the board an oath that he will faithfully and impartially discharge the duties of his office. Thereupon he shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings, and all other property belonging to and under the control of the said institution. He shall receive for his services a salary not exceeding the sum of three thousand dollars per annum. He shall appoint, except as hereinbefore provided, all officers and employees of said institution, who shall hold office during his pleasure. He shall provide a book in which shall be registered the name, residence, occupation, and religious creed of every boy received into the school; the date of his reception, and the date and condition of his discharge; the names, residence, and occupation of his parents; whether the boy was apprenticed or not, and if so apprenticed, the name, residence, and occupation of the person to whom he was apprenticed. He shall have charge of all persons committed to the institution by any magistrate or court, shall use his best efforts to employ, instruct, discipline, and reform all such persons under his charge, and shall discharge such other duties as the said board may direct, and shall at all times be subject to removal by the board for incapacity, immorality, negligence of duty, or cruelty to the inmates.

**To investigate workings of similar institutions.**

Sec. 14. [Repealed February 27, 1893; Stats. 1893, p. 40. In effect July 1, 1893.]

**Commitments.**

Sec. 15. When any boy under the age of eighteen years shall be found guilty, by a magistrate or court of competent jurisdiction, of any offense punishable by fine, or by imprisonment, or by both, and who, in the opinion of such magistrate or court would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in this act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school. The board shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts and magistrates committing any boy to such school to certify to the superintendent thereof the age of the person so committed, as nearly as can be ascertained by testimony taken under oath before such court or magistrate, or in such manner as the court or magistrate may direct.

**Approval of commitments.**

Sec. 16. Before any commitment, made by a police court, or by a justice of the peace, under this act, shall be executed, it shall be approved by a judge of the superior court of the county in which the police court or justice of the peace has jurisdiction, and his approval indorsed on the warrant of commitment. But if such sentence shall be disapproved, the police court or justice of the peace shall then impose the ordinary sentence prescribed by law.

**Dismissals.**

Sec. 17. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dis-

missed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing, and shall transmit the certificate to the magistrate or court by which such inmate or boy was committed. Said magistrate or court shall thereupon dismiss the accusation and the action pending against said person.

#### **Paroles.**

Sec. 18. There shall be established in said school a system of marking and grading upon merit or attainments in school and shop and general conduct, by which the boy committed under this act may work out his way to parole and honorable discharge. When in the opinion of the superintendent a boy, by the regulations established for that purpose, has earned the right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy may be employed and earn a living by honorable labor, and then shall recommend said boy to the board for parole, and if the board is satisfied that it is for the welfare of such boy to be paroled, it shall grant such parole under such condition as it may deem best, which shall be continued until such boy has proved his ability for honorable self-support when he shall, upon the recommendation of the superintendent, be honorably discharged. Any boy who, while on parole, violates the conditions of the parole may be returned to said school. [Amendment. Approved April 16, 1909; Stats. 1909, p. 964.]

#### **Incorrigible boys, return of to court.**

Sec. 19. Any boy committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation or so morally deficient or incorrigible as to render his retention detrimental to the interests of said school, or when it is ascertained by good and sufficient evidence that said boy has misrepresented his age to the court who sentenced him, or has been previously convicted of a felony, he may recommend such boy to the board for return to the said court, and if the board is satisfied that it is for the best interests of the school that such boy be returned, it

shall so cause him to be returned to the said court, and it shall be lawful for said court to annul and set aside the previous commitment to said Preston School of Industry and resume proceedings where the same were suspended when such commitment was made. [Amendment. Approved April 16, 1909; Stats. 1909, p. 964.]

**Transfer to, from state prison.**

Sec. 20. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution.

**Aiding escape.**

Sec. 21. Any person who knowingly permits, or who aids any boy to escape from the said school, or who knowingly promotes his departure, or conceals him with the intent of enabling such escaped boy to elude pursuit, shall be guilty of a misdemeanor, and shall, upon conviction, be punished according to law. Any fugitive from said institution, or from the parties to whom he is bound out or apprenticed, may be arrested and returned to the institution by any person upon written request or order of the superintendent directed to such person.

**Duties of trustees. Contracts. Security and bond of bidder.**

Sec. 22. The board of trustees are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other staple supplies of the school for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder at a public letting thereof, and if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board

may require, conditioned upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the school may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof over the contract price from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in one newspaper printed and published in the city and county of San Francisco, in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county of Amador. If all bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not in the option [opinion] of the board faithfully complied therewith. [Amendment. Approved February 27, 1893; Stats. 1893, p. 40. In effect July 1, 1893.]



**Proclamation by governor.**

Sec. 23. When the premises are ready for occupancy, the board shall certify such fact to the governor, who shall make due proclamation thereof. Thereafter it shall be lawful for any competent magistrate or court to commit juvenile offenders to the institution, as herein provided.

**Controller.**

Sec. 24. The controller of state is hereby authorized and directed, on requisition of the said board, to draw his warrant on the state treasurer in favor of said board, to pay for the necessary expenditures in the establishment and maintenance of the said school, and the state treasurer is authorized to pay the same from the appropriations provided for in this act.

**Effect of other acts in conflict.**

Sec. 25. For the purpose of giving practical effect to the provisions of this act, all laws or parts of laws which conflict with the provisions hereof are, for the purposes of this act only, suspended, and hereby made inapplicable to any boy committed to and in the custody of said school.

**Sheriff's fees.**

Sec. 26. In all proceedings relating to commitments under this act the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

**Construction of act.**

Sec. 27. This act shall be construed in conformity with the intent as well as with the express provisions hereof, and shall confer upon the board authority to do all those lawful acts, from time to time, which are necessary to promote the prosperity of the institution and the well-being and reformation of its inmates, including the organization of trade schools, the purchase and use of fixed and movable machinery, the erection of necessary buildings for machinery and other purposes, the improvement and management of a farm, orchard, and garden, the purchase of necessary supplies for the institution,

and materials for manufacture, and performance of all other necessary and lawful acts, not otherwise prohibited, which may be required to comply with the purposes of this act; but nothing herein contained shall be so construed as to permit said board to incur any indebtedness or obligation in excess of the appropriations allowed by law for the establishment and maintenance of said school.

#### Act takes effect when.

Sec. 28. This act shall take effect and be in force from and after its passage.

**Effect of Juvenile Court Law.** (See this act, ante, Appendix, tit. "Juvenile Court Law.") Section 28 of the Juvenile Court Law (Stats. 1909, p. 218) stated that it superseded the provisions of the above act establishing the Preston School of Industry. As, however, there was no express repeal of the act, and as it was amended by later enactments at the same session, it is doubtful if the Juvenile Court Law had such an effect. The act creating the Preston School of Industry is therefore printed in its entirety.

### SCHOOL OF REFORM.

*An Act to establish a school for the discipline, education, employment, reformation, and protection of juvenile delinquents, in the state of California, to be known as "The Whittier State School."*

**Title of original act.** The title of the original act, as enacted in 1889, read: "An Act to establish a state reform school for juvenile offenders, and to make an appropriation therefor." It was amended to read as above by Stats. 1893, p. 328.

[1. Approved March 11, 1889; Stats. 1889, p. 111. 2. Amended March 23, 1893; Stats. 1893, p. 328. 3. Amended March 7, 1905; Stats. 1905, p. 80. 4. Amended February 7, 1907; Stats. 1907, p. 8. 5. Amended April 19, 1909; Stats. 1909, p. 988.]

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Juvenile Court Law. As to this law, see note at end of this statute.

#### Change of name.

Section 1. There shall be established and maintained in this state, and located at Whittier, in the county of Los Angeles, an institution for the discipline, education, employment, reformation, and protection of juvenile delinquents in the state of California, to be known as "The Whittier State School;" and in all judicial, official, or other proceedings, and in all contracts, transfers, or other instruments in writing, the above name shall be deemed a sufficient designation of said institution. [Amendment. Approved March 23, 1893; Stats. 1893, p. 328.]

#### Board of trustees. Terms of office. Vacancy, how filled.

Sec. 2. The general supervision and government of said institution shall be vested in a board of trustees consisting of three citizens of

the state of California, who shall be appointed by the governor with the advice and consent of the senate. The members of said board shall hold their offices for the respective terms of two, three, and four years from the first day of March, eighteen hundred and eighty-nine, and until their successors shall be appointed and qualified said respective terms to be designated in their appointments; and thereafter there shall be one of said board appointed in the same manner every two years, whose term of office shall continue four years, and until his successor is appointed and qualified. If a vacancy shall occur in said board by expiration of the term of any such trustee, or otherwise, when the senate is not in session, the governor shall fill such vacancy for the unexpired term, subject to the approval of the senate at its next regular session. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same.

#### **Powers.**

Sec. 3. The trustees of such institution shall be a body corporate and politic for certain purposes, namely: To receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation but in trust and for the use and by the authority of the state of California, and to control, manage, and direct the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employees, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be impleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary for the successful discharge of the obligations devolved by law upon said members of trust; provided, that they shall not have power to bind the state by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution without the consent of the legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorizes such conveyance; and provided further, that the legislature shall have power

at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

**Selection of site.**

Sec. 4. The said board of trustees are hereby empowered [invested] with full power and authority to select a site for the permanent location of said school in the county of Los Angeles. Said trustees shall, within thirty days after their appointment and qualification, examine the different sites offered by the people of the county of Los Angeles for the location of the said school, and select therefrom a suitable location for said buildings; and the site selected by them shall be and remain the permanent site for said school; said site to contain not less than forty nor more than one hundred and sixty acres, giving preference, other things being equal, to a location central and easy of access from all parts of the county or state; provided, that no buildings shall be commenced or erected in said county of Los Angeles until a deed in fee-simple of the land selected by the said board of trustees shall be made to the state, and recorded in the records of the county recorder of said Los Angeles County, and said deed deposited in the office of the secretary of state. [Amendment. Approved March 23, 1893; Stats. 1893, p. 328.]

**To adopt plans.**

Sec. 5. The said board of trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an institution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable of such description that other buildings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the governor, for the construction of such buildings and fixtures and the improvement of the grounds according to such plans. Said board of trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

**Trustee or employee not to be interested.**

Sec. 6. No trustee or employee of such institution shall be personally, directly or indirectly, interested in any contract, purchase,

or sale made, or any business carried on in behalf of or for said institution. All contracts, purchases, or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person for his benefit, in whole or in part, in consideration of such purchases, contracts, or sales made, may be recovered back by civil suit, to be instituted in the name of the state of California, against such trustee, employee, or person acting in his behalf; and in addition it is hereby made the duty of the governor and the board of trustees, as the case may be, upon proof satisfactory of the fact of such interest, to immediately remove the trustee or employee delinquent as aforesaid, and to report the facts to the attorney-general, who shall take such legal steps in the premises as he shall deem expedient.

**Meetings and mode of transaction of business. Furniture and apparatus. Deficiencies.**

Sec. 7. The board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business; shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and that suitable employment and education are provided for its inmates. They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions, and everything necessary to equip the institution for the purposes herein specified, and to maintain and operate the same; provided, said board shall incur no expense nor contract any debt beyond appropriations made or donations given for the said school, and then only in such manner as may be prescribed by the act of appropriation or the instrument of donation. [Amendment. Approved March 23, 1893; Stats. 1893, p. 329.]

**Annual election of officers.**

Sec. 8. The board shall annually elect from their own number a president and a vice-president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a treasurer, not one of their own number, whose term of office shall be for two years, and until his successor shall be duly elected and qualified, who shall be at all times subject to re-

moval by the board for good cause. [Amendment. Approved March 23, 1893; Stats. 1893, p. 329.]

#### **Superintendent and other officers.**

Sec. 9. The board shall appoint a superintendent of said school, not of their own number, whose salary shall be fixed by said board, not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries, as may be reasonable. [Amendment. Approved March 23, 1893; Stats. 1893, p. 329.]

#### **Report of trustees.**

Sec. 10. Said board of trustees shall, on or before the first day of December every two years, make to the governor a full and detailed report of their doings as such trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the state; which report shall be communicated by the governor to the next succeeding session of the state legislature. Said trustees shall receive no salary for their services as such from the state, but shall be allowed all necessary expenses incurred in the discharge of their duties.

#### **Meetings.**

Sec. 11. The board of trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the president of said board in all cases where it becomes necessary for such a meeting.

#### **Duty of superintendent.**

Sec. 12. The superintendent before entering upon the duties of his office shall take an oath faithfully to discharge the same and execute a bond with sureties to be approved by the board, in a sum to be fixed by the board, conditioned for the faithful performance of all his duties as such superintendent. He shall be a resident at the institution, and shall be ex officio the secretary of the board, taking charge of all books and papers. He shall have charge of the land,

buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said board, and shall account to the board in such manner as they may require for all property intrusted to him, and all moneys received by him from whatever source shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board, who shall at least once in every three months carefully examine the same and all accounts, vouchers, documents connected therewith, and make a report of the result of such examination in a book provided for the purpose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the board for incapacity, cruelty, negligence, immorality, or any other good cause.

#### **Duty of treasurer.**

Sec. 13. The treasurer before entering upon the duties of his office shall take an oath faithfully to discharge the same, and shall execute a bond to the people of California with sureties to be approved by said board in at least double the sum of money for which he may be responsible as treasurer, conditioned for the faithful performance of all his duties as such treasurer; he shall take charge of all the funds of the institution, receiving the same and disbursing them on the written order of the superintendent, and shall account to the board in such a manner as they may require for all funds intrusted to him from whatever source. His books shall at all times be open to the inspection of the board and superintendent, who shall at least once in every six months carefully examine the same and all the accounts, vouchers, and documents connected therewith, and make a report of the result of such examinations. Such treasurer must be a citizen of Los Angeles County, and shall receive for his services a salary of six hundred dollars per annum.

#### **Buildings and grounds.**

Sec. 14. Said board of trustees shall arrange the building or buildings to be used for said school, and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for



the proper confinement, care, and education of the female inmates, and to the absolute exclusion of all communication of any kind or character between the sexes. [Amendment. Approved March 23, 1893; Stats. 1893, p. 329.]

**Age of boys and girls subject to admission.**

Sec. 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the governor shall make due proclamation of the fact, and thereafter it shall be lawful for said board of trustees to receive into its care and guardianship, boys between the ages of eight and nineteen years, and girls between the ages of eight and eighteen years, committed to its custody, as hereinafter provided. [Amendment. Approved April 19, 1909; Stats. 1909, p. 988.]

Legislation § 15. 1. Enacted March 11, 1889; Stats. 1889, p. 115. 2. Amended March 23, 1893; Stats. 1893, p. 329. 3. Amended April 19, 1909, p. 988.

**For what offenses may be committed.**

Sec. 16. When any boy between the ages of eight and nineteen years, or any girl between the ages of eight and eighteen years, shall be found guilty of any offense punishable by fine or imprisonment, or by both, in any court of competent jurisdiction in the state, and who, in the opinion of the judge thereof, would be a fit subject for training in said school, it shall be lawful for such judge to suspend judgment or sentence, except when the penalty is life imprisonment or death, and commit such boy or girl to the custody and guardianship of said school until he or she shall become twenty-one years of age. [Amendment. Approved April 19, 1909; Stats. 1909, p. 988.]

Legislation § 16. 1. Enacted March 11, 1889; Stats. 1889, p. 115. 2. Amended March 23, 1893; Stats. 1893, p. 330. 3. Amended March 7, 1905; Stats. 1905, p. 80. 4. Amended April 19, 1909; Stats. 1909, p. 988.

**Truant children, commitment of.**

Sec. 16a. Any child between the ages of eight and fourteen years who willfully and habitually absents himself or herself from school contrary to the provisions of an act entitled "An Act to enforce the educational rights of children and providing penalties for violation of the act," approved March 24th, 1903, and as amended by an act

approved March 20th, 1905, and as further amended by an act approved March 4th, 1907, may be committed to the custody and guardianship of said school by any superior court judge on the complaint of any peace-officer, teacher, parent, guardian or other person, under the same conditions and in the same manner as is provided in section 16 of this act. [Amendment. Approved April 19, 1909; Stats. 1909, p. 988.]

Legislation § 16a. 1. Added March 7, 1905; Stats. 1905, p. 81. 2. Amended April 19, 1909; Stats. 1909, p. 988.

#### **Dependent and delinquent children may be committed.**

Sec. 16b. Any child who comes under the provision of an act entitled an act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing what proceedings under this act shall be admissible in evidence, approved February 26th, 1903, may be committed to the Whittier State School by any superior judge under the same conditions and in the same manner as provided in section sixteen of this act. [Added March 7, 1905; Stats. 1905, p. 81.]

Legislation § 16b. The original § 16b was added by Stats. 1893, p. 330; renumbered § 16c by Stats. 1905, p. 82, when the present § 16b was added; § 16c amended by Stats. 1909, p. 990, and renumbered § 18, q.v., post.

#### **Conditions and manner of commitment.**

Sec. 16c. Any judge of any superior court of this state may commit any boy between the ages of eight and nineteen years, or girl between the ages of eight and eighteen years to the custody and guardianship of the said school on the conditions and in the manner following:

1. On the complaint in writing filed and due proof thereof made, by the parent or guardian of said boy or girl, showing that by reason of the incorrigible or vicious conduct of such boy or girl, he or she is beyond the control and power of such parent or guardian.

2. On complaint in writing filed and due proof thereof made, showing that such boy or girl is a proper subject for the care and guardianship of said school, by reason of vagrancy or incorrigible or vicious conduct; or in cases where, from moral depravity or otherwise, the parent or guardian having control of such boy or girl is incapable of exercising, or unwilling to exercise, the proper care or discipline over such boy or girl, and in cases where such boy or girl has no parent, guardian or other protector.

3. On complaint in writing filed and due proof thereof made by the mother, or guardian when the father is dead, or has abandoned his family, or is an habitual drunkard, or does not support his family, and it appears that such boy or girl is destitute of a home and adequate means of obtaining an honest living and is in danger of being brought up to lead an idle or immoral life. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 989.]

**Legislation § 16c.** 1. Added as § 20, March 23, 1893; Stats. 1893, p. 832. 2. Amended and renumbered § 16c, April 19, 1909; Stats. 1909, p. 989. The original § 16c was added by Stats. 1893, p. 832; renumbered § 16d by Stats. 1905, p. 82; § 16d amended and renumbered § 19 by Stats. 1909, p. 990, q.v., post.

**Sec. 16d.** [Renumbered section.]

**Legislation § 16d.** 1. Added by Stats. 1893, p. 831. 2. Amended and renumbered § 16e by Stats. 1905, p. 82. 3. § 16e amended and renumbered § 20 by Stats. 1909, p. 991, q.v., post.

**Sec. 16e.** [Renumbered section.]

**Legislation § 16e.** See supra, Legislation § 16d, and post, Legislation § 20.

**Citation to custodian of child. Warrant for arrest of parent or custodian. Detention of child. Term of commitment.**

**Sec. 17.** In all cases where complaint is made by another than the parent or guardian having the custody of said boy or girl, a citation shall issue requiring the person having custody or control of said boy or girl, or with whom the said boy or girl may be, to appear with him or her at a place and time stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein. The parents or guardian of the boy or girl, if residing in the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent

or guardian so residing, or if their places of residence be not known to petitioner, then some relative of the boy or girl, if there be any residing in said county, and if his residence and relationship to such boy or girl be known to petitioner, shall be notified of the proceedings by service of citation requiring them to appear at the time and place to be stated in such citation. In any case the judge may appoint some suitable person to act in behalf of the boy or girl, and may order such further notice of the proceeding to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring the boy or girl, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in cases of contempt of court. In case any such citation cannot be served, or the party served fails to observe the same, and in any case in which it shall be made to appear to the court that such citation shall be ineffectual, a warrant of arrest may issue on the order of the court, either against the parent or guardian, or the person having the custody of the boy or girl, or with whom he or she may be, or against the boy or girl, or any of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the boy or girl immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the boy or girl may be retained in the possession of the person having charge of the same, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct. In all cases of commitment to said school the same shall be until said boy or girl is twenty-one years of age, and it shall be the duty of the court committing such boy or girl to such school to certify to the superintendent thereof, the date of birth or age of such boy or girl so committed, as nearly as the same can be ascertained by testimony taken under oath either before the court or in such manner as he may direct. [Added April 19, 1909; Stats. 1909, p. 989.]

Legislation § 17. The original § 17 was enacted March 11, 1889 (Stats. 1889, p. 115); amended by Stats. 1893, p. 332; amended by Stats. 1905, p. 82; repealed by Stats. 1909, p. 991.

**Discharge of child.**

Sec. 18. It shall be lawful for the board whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed and all those who have attained the age of twenty-one years shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing and shall transmit the certificate to the court by which such inmate was committed. Said court, thereupon, shall dismiss the accusation and the action pending against said person. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 990.]

Legislation § 18. 1. Added as § 16b, March 23, 1893; Stats. 1893, p. 332. 2. § 16b renumbered § 16c, March 7, 1905; Stats. 1905, p. 82; 3. § 16c amended and renumbered § 18, April 19, 1909; Stats. 1909, p. 990. The original § 18 was enacted March 11, 1889 (Stats. 1889, p. 116); amended by Stats. 1893, p. 332; amended by Stats. 1905, p. 82; repealed by Stats. 1909, p. 991.

**Right to parole.**

Sec. 19. There shall be established in said school a system of marking and grading upon merit or attainments in school and shop and general conduct, by which the boy or girl committed under this act may work out his or her way to parole and honorable discharge. When in the opinion of the superintendent a boy or girl, by the regulations established for that purpose, has earned a right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy or girl may be employed and earn a living by honorable labor, and then shall recommend said boy or girl to the board for parole, and if the board is satisfied that it is for the welfare of such boy or girl to be paroled, it shall grant such parole under such conditions as it may deem best, which shall be continued until such boy or girl has proved his or her ability for honorable self-support, when he or she shall, upon the recommendation of the superintendent, be honorably discharged. Any boy or

girl who, while on parole, violates any of the conditions of the parole may be returned to said school. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 990.]

Legislation § 19. 1. Added as § 16c, March 23, 1898; Stats. 1898, p. 881. 2. § 16c renumbered § 16d, March 7, 1905; Stats. 1905, p. 82. 3. § 16d amended and renumbered § 19, April 19, 1909; Stats. 1909, p. 990. For the original § 19, see post, § 21.

#### **Incorrigible children to be returned to court.**

Sec. 20. Any boy or girl committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation, or so morally deficient or incorrigible as to render his or her retention detrimental to the interests of said school, or when it is ascertained by good and sufficient evidence, that said boy or girl has misrepresented his or her age to the court who sentenced him or her, or has been previously convicted of a felony, he may recommend such boy or girl to the board of trustees for return to the said court and if the said board is satisfied that it is for the best interests of the school that such boy or girl be returned, it shall so cause him or her to be returned to said court, and it shall be lawful for said court to annul and set aside the previous commitment to the said Whittier State School and resume proceedings where the same were suspended when such commitment was made. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 991.]

Legislation § 20. 1. Added as § 16d, March 23, 1898; Stats. 1898, p. 881. 2. § 16d amended and renumbered § 16e, March 7, 1905; Stats. 1905, p. 82. 3. § 16e amended and renumbered § 20, April 19, 1909; Stats. 1909, p. 991. For original § 20, see ante, § 16c.

#### **Private examinations.**

Sec. 21. All minors between the ages of eight and eighteen years who may be accused of any offense under this act shall, with a view to the question whether they ought to be committed to said school, be entitled to a private examination before the court, to which only the parties to the case and the parent or guardian of the accused and such officers of the court as he may direct, and such attorneys as may be engaged in the hearing, shall be admitted, unless one of the parents, the guardian or other legal representative of the minor demands a public trial; in such cases the proceedings shall be in the

usual manner. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 991.]

**Legislation § 21.** 1. Enacted as § 19, March 11, 1889; Stats. 1889, p. 116. 2. § 19 amended March 23, 1893; Stats. 1893, p. 333. 3. § 19 amended and renumbered § 21, April 19, 1909; Stats. 1909, p. 991. The original § 21 was enacted March 11, 1889 (Stats. 1889, p. 117); amended by Stats. 1893, p. 333; repealed by Stats. 1909, p. 992.

**Record, what only to be made.**

Sec. 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of — years, having been brought before said court, or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

**Clothing, money, and transportation for those released.**

Sec. 23. Upon the discharge of any person committed to said school, the superintendent thereof, under such regulations and restrictions as the said board of trustees may prescribe, may provide such person with suitable clothing and five dollars in money, and procure transportation for such person to his or her home, if resident in this state, or to the county to [in] which he or she may have been committed, [convicted,] at his or her option. [Amendment. Approved March 23, 1893; Stats. 1893, p. 333.]

**Aiding escapes. Punishment therefor.**

Sec. 24. If any person procure the escape of any person committed to the school, or advise or connive at, aid, or assist in such escape, or conceal any such person so committed after such escape, he shall, upon conviction thereof in any superior court, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than two months

nor more than one year, or by both such fine and imprisonment; or, if such person so convicted be under the age of sixteen years, then he shall be sentenced to the school, as in this act provided. [Renumbered. Approved April 19, 1909; Stats. 1909, p. 992.]

**Legislation § 24.** 1. Enacted as § 26, March 11, 1889; Stats. 1889, p. 118. 2. § 26 amended March 23, 1893; Stats. 1893, p. 834. 3. § 26 renumbered § 24, April 19, 1909; Stats. 1909, p. 992.

**Who shall execute writ of commitment.**

**Sec. 25.** It shall be the duty of the sheriff of any county wherein an order is made or approved by a superior judge committing any minor to said school, to execute any and all writs of commitment issued or approved by said judge, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the state prison, provided, that in all cases where the commitment shall be made under section 16a, 16b, or 16c, of this act, the parent, guardian, or other protector of such minor may, at his option, and in all cases where he is liable, or where the estate of such minor is sufficient, execute said writ of commitment, after having been duly sworn therefor with like powers and with like effect as the sheriff would possess in such case, but without expense to the state; and further provided, that in the case of a minor female committed to said school, and there is no parent, guardian, or other protector of such minor, who, in the opinion of the court, is a proper person to safely conduct such female to said school, that then, in such case, the court shall appoint some suitable woman of satisfactory character and discretion, who shall take the custody of such minor female after her said commitment, and shall forthwith deliver her to said school, and be entitled to the same compensation therefor as is otherwise provided to be paid to the sheriff in all cases where, if such minor were a boy and were by a sheriff delivered to said school, he, the said sheriff, would be entitled to receive compensation, under the terms of this act. [Amended and renumbered. Approved April 19, 1909; Stats. 1909, p. 992.]

**Legislation § 25.** 1. Enacted as § 28, March 11, 1889; Stats. 1889, p. 119. 2. § 28 amended March 23, 1893; Stats. 1893, p. 835. 3. § 28 amended and renumbered § 25, April 19, 1909; Stats. 1909, p. 992. The original § 25 was enacted March 11, 1889 (Stats. 1889, p. 118); repealed by Stats. 1909, p. 992.



**Auditing by board of trustees.**

Sec. 26. The said board of trustees shall examine, audit, and allow the demands arising under the terms of the aforesaid act and the amendments thereto, and the state controller shall thereupon draw his warrants therefor, payable out of the proper fund, and the state treasurer is hereby ordered to pay such warrants. [Renumbered. Approved April 19, 1909; Stats. 1909, p. 992.]

Legislation § 26. 1. Enacted as § 80, March 11, 1889; Stats. 1889, p. 120. 2. § 80 amended March 23, 1893; Stats. 1893, p. 386. 3. § 80 renumbered § 26, April 19, 1909; Stats. 1909, p. 992. The original § 26 was enacted March 11, 1889 (Stats. 1889, p. 118); amended by Stats. 1893, p. 384; renumbered § 24 by Stats. 1909, p. 992, q.v., ante.

**Boys may be transferred from state prison.**

Sec. 27. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution. [Renumbered. Approved April 19, 1909; Stats. 1909, p. 992.]

Legislation § 27. 1. Added as § 31, February 7, 1907; Stats. 1907, p. 3. 2. § 31 renumbered § 27, April 19, 1909; Stats. 1909, p. 992. The original § 27 was enacted March 11, 1889 (Stats. 1889, p. 118); amended by Stats. 1893, p. 334; repealed by Stats. 1909, p. 992.

**Sec. 28. [Renumbered section.]**

Legislation § 28. 1. Enacted March 11, 1889; Stats. 1889, p. 119. 2. Amended March 23, 1893; Stats. 1893, p. 335. 3. Amended and renumbered § 25, April 19, 1909; Stats. 1909, p. 992; q.v., ante.

**When inmate must support himself.****Sec. 29. [Repealed section.]**

Legislation § 29. 1. Enacted March 11, 1889; Stats. 1889, p. 119. 2. Amended March 23, 1893; Stats. 1893, p. 336. 3. Repealed April 19, 1909; Stats. 1909, p. 992.

**Sec. 30. [Renumbered section.]**

Legislation § 30. 1. Enacted March 11, 1889; Stats. 1889, p. 120. 2. Amended March 28, 1898; Stats. 1898, p. 286. 3. Renumbered § 26, April 19, 1909; Stats. 1909, p. 992; q.v., ante.

**Sec. 31. [Renumbered section.]**

Legislation § 31. 1. Added February 7, 1907; Stats. 1907, p. 8. 2. Renumbered § 27, April 19, 1909; Stats. 1909, p. 992; q.v., ante.

**Act takes effect when.**

Sec. 31. This act shall take effect and be in force from and after its passage.

**Effect of Juvenile Court Law.** (See this act, ante, Appendix, tit. "Juvenile Court Law.") Section 28 of the Juvenile Court Law (Stats. 1909, p. 218) stated that it superseded the provisions of the above act establishing the Whittier State School. As, however, there was no express repeal of the act, and as it was amended by later enactments at the same session, it is doubtful if the Juvenile Court Law had such an effect. The act creating the Whittier State School is therefore printed in its entirety.

*An Act relating to commitments to the state school at Whittier and to the Preston School of Industry; fixing the authority to examine and commit to such schools with the superior court judges of the counties, and fixing the responsibilities from which commitments are made to the state for maintenance of the persons committed therefrom; providing for the manner of payment thereof, and fixing the responsibility of the parents to the counties from which their children are committed.*

[Approved March 26, 1895; Stats. 1895, p. 122.]

- § 1. Only superior judges shall commit to Whittier and Preston schools. Parents shall pay.
- § 2. Counties shall pay.
- § 3. Duty of clerk of court. Duty of county treasurer.
- § 4. Duty of superintendents of state schools.
- § 5. Conflicting acts repealed.
- § 6. Act takes effect when.

**Only superior judges shall commit to Whittier and Preston schools.  
Parents shall pay.**

Section 1. The superior judge of any county, and no other judicial officer, shall have power to examine, discharge, or commit any

offender either to the Whittier State School or to the Preston School of Industry; provided, that the superior judge shall determine whether or not the parent or guardian of any minor committed to the Whittier State School or to the Preston School of Industry is able to pay to the county in which the commitment is made for the maintenance of such minor during the term of such commitment; and when the superior judge shall determine that said parent or guardian has the ability to pay as aforesaid for the maintenance of such minor during the term of such confinement, the parent or parents or guardian shall pay into the treasury of such county the sum of eleven dollars per month in advance; and in case of the failure to pay the same as herein provided, it shall be the duty of the district attorney of such county to proceed to collect the amount from such parent, parents, or guardian in the manner that other indebtedness against the county is collected.

**Counties shall pay.**

Sec. 2. For each and every person hereafter committed to either the Whittier State School or the Preston School of Industry, the county from which the commitment is made shall pay into the state treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year.

**Duty of clerk of court. Duty of county treasurer.**

Sec. 3. It is hereby made the duty of the clerk of the superior court of the county from which such commitment is made, to certify to the county auditor the name, age, and date of commitment of each person committed by the superior judge thereof, and the amount due to the state from the county by reason of such commitments, and before the first day of May and December of each and every year to file with the treasurer of the county a statement of the number of commitments, with the date thereof, and the amount due from the county by reason of such commitments, to the state treasurer; and it is further made the duty of the county treasurer, during the settlement or at the time of the settlement with the state during the month of May and December of each year, to pay to the state treasurer, through the state controller, the amount so found to be due to the state by reason of commitments to the state schools as herein provided.

**Duty of superintendents of state schools.**

Sec. 4. The superintendent of the state school at Whittier and the Preston School of Industry are hereby required to transmit to the state treasurer a statement of all commitments to their respective institutions, showing the name of the person committed, the date of the commitment, and the county from which the commitment is made, and the amount due to the state from the county by reason of such commitments; said statement to be made quarterly, as follows: on or before the first day of January, the first day of April, the first day of July, and the first day of October of each year; and it is hereby made the duty of the controller of state to add the amounts due to the state from said counties such sum as may be shown to be due by reason of commitments to such schools, as in section two of this act provided.

**Conflicting acts repealed.**

Sec. 5. All acts and parts of acts in conflict herewith are hereby repealed.

**Act takes effect when.**

Sec. 6. This act shall take effect immediately.

**SEDUCTION.***An Act to punish seduction.*

[Approved March 1, 1872; Stats. 1871-72, p. 184.]

**Seduction.**

Section 1. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, and every person who by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

## SHIPPING.

See ante, Appendix, tit. "Buoys and Beacons."

## STATE PRISONS.

*An Act providing for the erection and operation of rock-crushing plants at the state prisons, for the preparation of highway material for the benefit of the people of the state, and providing for the necessary advances and appropriation of money to carry out said work.*

[Approved March 28, 1895; Stats. 1895, p. 274.]

- § 1. Rock-crushing plants may be established.
- § 2. Cost of product, how to be estimated.
- § 3. Sale price.
- § 4. Profit to be paid into state treasury.
- § 5. Prison directors may lease railroad cars.
- § 6. Appropriation.
- § 7. Revolving fund.
- § 8. Conflicting acts repealed.
- § 9. Act takes effect when.

**Rock-crushing plants may be established.**

Section 1. The governor of the state, the state prison directors, and the bureau of highways (or if the latter shall not be established, then and in that case the two first named) shall, when satisfied that fifty thousand cubic yards of prepared road or highway metal, as hereinafter described, will be taken for highway purposes, purchase, establish, and operate at one or both of the state prisons, a rock or stone crushing plant, to be operated by convict labor and by the application of power under control of the state prison directors, and with such free labor as is necessary for superintendence and direction, to crush rock or stone into road-metal for highway purposes, of different and necessary degrees of fineness; provided, that the authority and direction hereby and herein conferred and given, shall not be exercised or employed until the governor and the state prison directors are satisfied that transportation can be had for such highway-metal for highway purposes at just and reasonable rates, and so as to justify the setting up and operation herein provided for of said plant.

**Cost of product, how to be estimated.**

Sec. 2. When such plant described in section one is set up and operated there shall be taken into account in ascertaining the cost of producing highway-metal therefrom, only the cost of necessary explosives, oil, fuel, tools, and machinery exclusive of the plant itself, repairs, superintendence, and direction, and the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage and delivery from cars of said highway-metal.

**Sale price.**

Sec. 3. To said cost of production so ascertained, as set out in section two, there shall be added for and to each and every cubic yard of highway-metal so produced, ten per cent, and the result or product of such addition shall be the sale price of such metal delivered from the plant free on board of the cars or other vehicles of transportation.

**Profit to be paid into state treasury.**

Sec. 4. Said ten per cent shall, as realized, and not less frequently than semi-annually, be paid into the state treasury, until there shall have been paid in the full sum of twenty-five thousand dollars, and thereafter said percentage shall be reduced to five per cent, and the same, as realized, shall be paid into the fund for the support of the state prisons.

**Prison directors may lease railroad cars.**

Sec. 5. The state prison directors are hereby authorized to lease railroad cars with equipment suitable for the rapid and economical handling and delivery of highway material prepared as aforesaid, whenever in their judgment the interests of the people of the state will be conserved thereby in the matter of highway construction by the use of such highway-metal so produced, as in this act provided. The cost of such leasing shall in such case be carried into the cost of production described in section two.

**Appropriation.**

Sec. 6. The sum of thirty thousand dollars is hereby advanced by the state, for the purposes of this act, and said sum is hereby appropriated out of the general fund of the treasury, subject to the de-

mand of the state prison directors; and the state controller shall, on presentation of such demand, in writing, draw his warrant upon the treasurer for the said sum of money in behalf of said state prison directors, and the state treasurer shall, on presentation of such warrant, pay the same. Twenty-five thousand dollars of said sum of money so advanced and appropriated shall be returned to the fund from which drawn, as is specified and directed in this act.

#### **Revolving fund.**

Sec. 7. The sum of five thousand dollars is hereby set apart out of the money so appropriated in the previous section, to and for the usage [use] of the state prison directors, to provide and maintain a permanent revolving fund for the purchase of tools, machinery, and other material and appliances, exclusive of the establishment of the plant described in this act, to be used in the process of crushing and handling rock or stone at the state prisons for the purposes contemplated and set out in this act. All money taken from said revolving fund shall be used exclusively in payment for such supplemental machinery, tools, material, and appliances necessary to the proper quarrying, handling, and preparing of highway material at said state prisons; and so much of the money received for sale of highway-metal as shall be necessary to that end shall be returned to said revolving fund as is needed to keep the same constantly at the said figure of five thousand dollars.

#### **Conflicting acts repealed.**

Sec. 8. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

#### **Act takes effect when.**

Sec. 9. This act shall take effect and be in force from and after its passage.

*An Act to regulate and govern the operation of the rock-crushing plant at the state prison at Folsom, to provide for the sale of crushed rock, and the disposition of the revenues derived therefrom.*

[Approved March 11, 1897; Stats. 1897, p. 99.]

- § 1. Board of prison directors to control rock-crushing plant at Folsom.
- § 2. How operated.
- § 3. Sale of road-metal.
- § 4. Sale price.
- § 5. Cost of metal, how estimated.
- § 6. May lease cars.
- § 7. Revolving fund.
- § 8. Disposal of surplus funds.
- § 9. Duty of clerk at Folsom.
- § 10. Disbursement of money.
- § 11. Plant may be rebuilt. Appropriation therefor.
- § 12. Powers of prison directors.
- § 13. Inconsistent acts repealed.
- § 14. Act takes effect when.

#### **Board of prison directors to control rock-crushing plant at Folsom.**

Section 1. The state board of prison directors shall regulate, govern, and have full control of the rock or stone crushing plant established at the state prison at Folsom, the product thereof, the revenues derived therefrom, and all appropriations of money therefor.

#### **How operated.**

Sec. 2. The plant shall be operated by convict labor, and by the application of the mechanical and water power belonging to the state prison at Folsom, together with such free labor as the state board of prison directors may deem necessary for superintending, directing, and guarding the convicts employed thereon.

#### **Sale of road-metal.**

Sec. 3. The state board of prison directors are hereby empowered and authorized to sell and to otherwise dispose of the crushed-rock product of the said plant; provided, that in all cases preference shall be given to orders received from the bureau of highways for crushed rock for road-metal for highway purposes.

#### **Sale price.**

Sec. 4. The sale price of all crushed rock sold for road-metal for highway purposes shall be the cost of production, with ten per



centum added, delivered on board cars or other vehicles of transportation at the rock-crushing plant; provided, that no rock shall be sold for highway or other purposes for a less price than thirty cents per ton.

**Cost of metal, how estimated.**

Sec. 5. The cost of production shall be ascertained by estimating the cost of explosives, oil, fuel, tools, repairs, free labor, supplementary machinery, the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage to and delivery from cars, of said crushed rock, the leasing of railroad cars, and the cost of such other materials, supplies, and expenses as may be required and used in producing each ton of crushed rock ready for sale delivery.

**May lease cars.**

Sec. 6. The state board of prison directors are hereby authorized to lease railroad cars, with equipments suitable for the rapid and economical handling and delivery of crushed rock, prepared as aforesaid, whenever in their judgment the interest of the people of the state will be conserved thereby, in the matter of highway construction, by the use of said crushed rock. The cost of said leasing shall be carried into the cost of production described in section five.

**Revolving fund.**

Sec. 7. The amount of five thousand dollars heretofore appropriated is hereby set apart to and for the usage [use] of the state board of prison directors, to provide and maintain a permanent revolving fund for the purpose of operating and maintaining the rock-crushing plant at Folsom prison. The money taken from said revolving fund shall be used exclusively for operating and maintaining the said rock-crushing plant. So much of the money received from the sale of crushed rock as shall be necessary to that end, shall be returned to said revolving fund, as it is needed to keep the same constantly at the said figure of five thousand dollars.

**Disposal of surplus funds.**

Sec. 8. Whenever the revolving fund shall be replenished, and there shall be a surplus, or balance, over the amount appropriated,

this surplus, or balance, shall be paid, not less frequently than semi-annually, into the state treasury, to the credit of the fund known as "the state prison fund of Folsom prison," for the use and support of Folsom prison.

#### **Duty of clerk at Folsom.**

Sec. 9. The clerk of the state prison at Folsom shall keep such records, books, and accounts as may be necessary to at all times clearly exhibit the financial, business, and other transactions of the said rock-crushing plant. All such records, books, and accounts shall be kept separate and distinct from those relating to other prison affairs.

#### **Disbursement of money.**

Sec. 10. For all sums of money herein required to be paid, drafts shall be drawn on the controller of state, signed by at least three members of the state board of prison directors. Said drafts shall be sent to the state board of examiners, to be by them approved, and after approval by said state board of examiners, the controller of state shall draw his warrant in behalf of said state board of prison directors, on the state treasurer, who shall pay the same, on presentation of such warrant; provided, that the state board of examiners is hereby expressly prohibited from approving of any of said drafts until the same are presented with itemized statements, showing specifically the services rendered, by whom performed, time employed, distance traveled, and necessary expenses thereof; if for articles purchased, the said statement shall give the name of each article, together with the price paid for each, and of whom purchased, together with the date of purchase.

#### **Plant may be rebuilt. Appropriation therefor.**

Sec. 11. If any of the buildings, machinery, or structures appertaining to or comprising the said rock-crushing plant are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the state board of prison directors, by and with the consent solely of the governor, the attorney-general, and the secretary of state, and the expenses thereof, not to exceed in amount the sum of ten thousand dollars, shall be paid

out of any funds in the state treasury not otherwise appropriated by law, and the provisions of no other act shall apply to or govern or limit this section, or any of the powers or duties herein conferred.

**Powers of prison directors.**

Sec. 12. The state board of prison directors are hereby authorized and empowered to perform such other acts and duties as may be necessary to carry out the full intent and meaning of this act.

**Inconsistent acts repealed.**

Sec. 13. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

**Act takes effect when.**

Sec. 14. This act shall take effect immediately.

*An Act to authorize and empower the state board of prison directors to purchase California-grown hemp, to be used in the manufacture of grain-bags, and to fix the price at which such bags shall be sold.*

[Approved March 16, 1901; Stats. 1901, p. 515.]

**Prison directors authorized to purchase California-grown hemp.**

Section 1. The state board of prison directors are authorized and empowered to purchase California-grown hemp, to be used in the manufacture of grain-bags, and to pay for the same from the revolving fund created by law for the purchase of jute. The price for which grain-bags made at said prison from hemp shall be sold shall be fixed by the state board of prison directors, in the same manner as the price of bags made from jute is now by law fixed by said board.

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act authorising the state board of prison directors to fix the price, terms and conditions of sale at which jute bags should be sold for the state, providing for the prosecution and punishment for offenses under the same, and repealing certain acts.*

[Approved March 10, 1909; Stats. 1909, p. 280.]

- § 1. Jute goods, rules for sale of.
- § 2. Affidavit of purchaser.
- § 3. False affidavits, penalty for.
- § 4. Books of account for public inspection, keeping of.
- § 5. Certain act and conflicting acts repealed.
- § 6. Act takes effect when.

#### **Jute goods, rules for sale of.**

Section 1. The state board of prison directors are authorized and empowered to adopt rules and regulations for the sale of jute goods, but such rules and regulations, before they become effective, shall be approved by a majority of the state board of examiners. The state board of prison directors shall annually, in the month of December of each year fix the price, for the sale of jute bags and give public notice of the same, for at least ten days in as least four newspapers of general circulation printed and published as follows to wit: one in the city and county of San Francisco, one in the San Joaquin Valley, one in the Salinas Valley and one in the Sacramento Valley. Until the 1st day of April of each year, jute bags shall be sold only to consumers thereof, but after said date, if a surplus of said jute bags remains unsold, they may be sold to any one in such quantities and at such prices as the board of directors in their discretion may deem proper.

#### **Affidavit of purchaser.**

Sec. 2. All orders for jute bags filed with the board of prison directors prior to the first day of April of each year, shall be accompanied by an affidavit setting forth the name, residence, post-office address and occupation of the applicant; that the amount of goods contained in the order are for the applicant's individual and personal use, and that he has not contracted for, nor agreed to contract for the sale of any portion thereof to any person or persons whatsoever. Said affidavit shall be subscribed and sworn to before a notary public, justice of the peace, or other officer authorized to administer oaths.

**False affidavits, penalty for.**

Sec. 3. Any person who shall falsely or fraudulently make such affidavit, or who shall falsely or fraudulently procure jute bags under the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than two hundred dollars (\$200.00).

**Books of account for public inspection, keeping of.**

Sec. 4. The board of prison directors shall keep at the San Quentin prison a book for public inspection, in which shall be entered the number of jute bags, the amount of jute goods manufactured each year, and also the name of each purchaser, his post-office address, his occupation, number of jute bags or jute goods purchased by him, and the price paid by him therefor and the date and sale and the place to which shipment is made.

**Certain act and conflicting acts repealed.**

Sec. 5. An act entitled, "An Act fixing the price, terms and conditions of sale at which jute goods shall be sold by the state, and providing for prosecution and punishment for offenses under the same;" approved March 22d, 1907, and all other acts and parts of acts in conflict with this act are hereby repealed.

**Act takes effect when.**

Sec. 6. This act shall take effect and be in force from and after its passage.

*An Act to authorize and empower the state board of prison directors to insure jute and jute goods against either fire or marine loss and to pay the cost of such insurance from the revolving fund for the purchase of jute.*

[Approved March 10, 1909; Stats. 1909, p. 281.]

**Insurance of jute goods.**

Section 1. The state board of prison directors is hereby authorized and empowered to insure from time to time against fire or marine loss, all jute and jute goods owned by the state, in such amounts as

it may deem proper. The cost of such insurance shall be paid from the revolving fund for the purchase of jute.

**Act takes effect when.**

**Sec. 2.** This act shall take effect immediately.

*An Act directing the state prison directors of the state of California to employ at least twenty prisoners in the construction of roads to the state prisons at San Quentin and at Folsom.*

[Approved March 12, 1908; Stats. 1908, p. 127.]

**State prisoners, employment of, on public roads.**

Section 1. The state prison directors of the state of California are hereby authorized and directed to employ at least twenty prisoners daily during fair weather, in the construction and repair of such public roads as have been or shall hereafter be laid out or opened by the board of supervisors of Marin County, and which extend from San Quentin state prison, or the grounds surrounding the same, to Point Tiburon, San Rafael, and all railroad stations in Marin County which lie in the neighborhood of the said state prison; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison buildings: and also to employ at least twenty prisoners under like conditions on roads extending from the state prison at Folsom in Sacramento County or connecting therewith; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison building.

**Act takes effect when.**

**Sec. 2.** This act shall take effect and be in force from and after its passage.

**Similar acts.** Acts similar in terms were passed in 1898 (Stats. 1898, p. 141); in 1897 (Stats. 1897, p. 6); in 1891 (Stats. 1891, p. 222).

*An Act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.*

[Approved April 12, 1880; Stats. 1880, p. 43.]

See this act, ante, Appendix, tit. "Costs."

*An Act to establish board of parole commissioners for the parole of and government of paroled prisoners.*

[1. Approved March 23, 1898; Stats. 1898, p. 188. 2. Amended February 28, 1901; Stats. 1901, p. 82.]

**Parole and government of paroled prisoners. Governor may revoke parole.**

Section 1. The state board of prison directors of this state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of the state board of prison directors, and subject at any time to be taken back within the inclosure of said prison; and full power to make and enforce such rules and regulations and retake and imprison any convict so upon parole is hereby conferred upon said board of directors, whose written order certified by the president of said board shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all chiefs of police, marshals of cities and villages, and sheriffs of counties, and all police, prison, and peace-officers and constables to execute any such order in like manner as ordinary criminal process; provided, however, that no prisoner imprisoned under a sentence for life shall be paroled until he shall have served at least seven calendar years. The governor of the state shall have like power to cancel and revoke the parole of any prisoner, and his written authority shall likewise be sufficient to

authorize any of the officers named therein to retake and return said prisoner to the state prison, and his written order canceling or revoking the parole shall have the same force and effect and be executed in like manner as the order of the state board of prison directors. If any prisoner so paroled shall leave the state without permission from said board he shall be held as an escaped prisoner and arrested as such. [Amendment. Approved February 28, 1901; Stats. 1901, p. 82.]

**Act takes effect when.**

Sec. 2. This act shall take effect immediately.

*An Act to provide for the creation of a board of parole commissioners for each county in this state, for the paroling of prisoners confined in county jails, and authorising and empowering such boards to make rules and regulations in relation thereto.*

[Approved March 25, 1909; Stats. 1909, p. 788.]

This act is printed in its entirety in the General Laws, tit. "Parole Commissioners," Act 2620.

## SUPERVISORS.

*An Act to authorize boards of supervisors to pay the expenses of posse comitatus in criminal cases.*

[Approved April 16, 1880; Stats. 1880, p. 102.]

**Posse comitatus.**

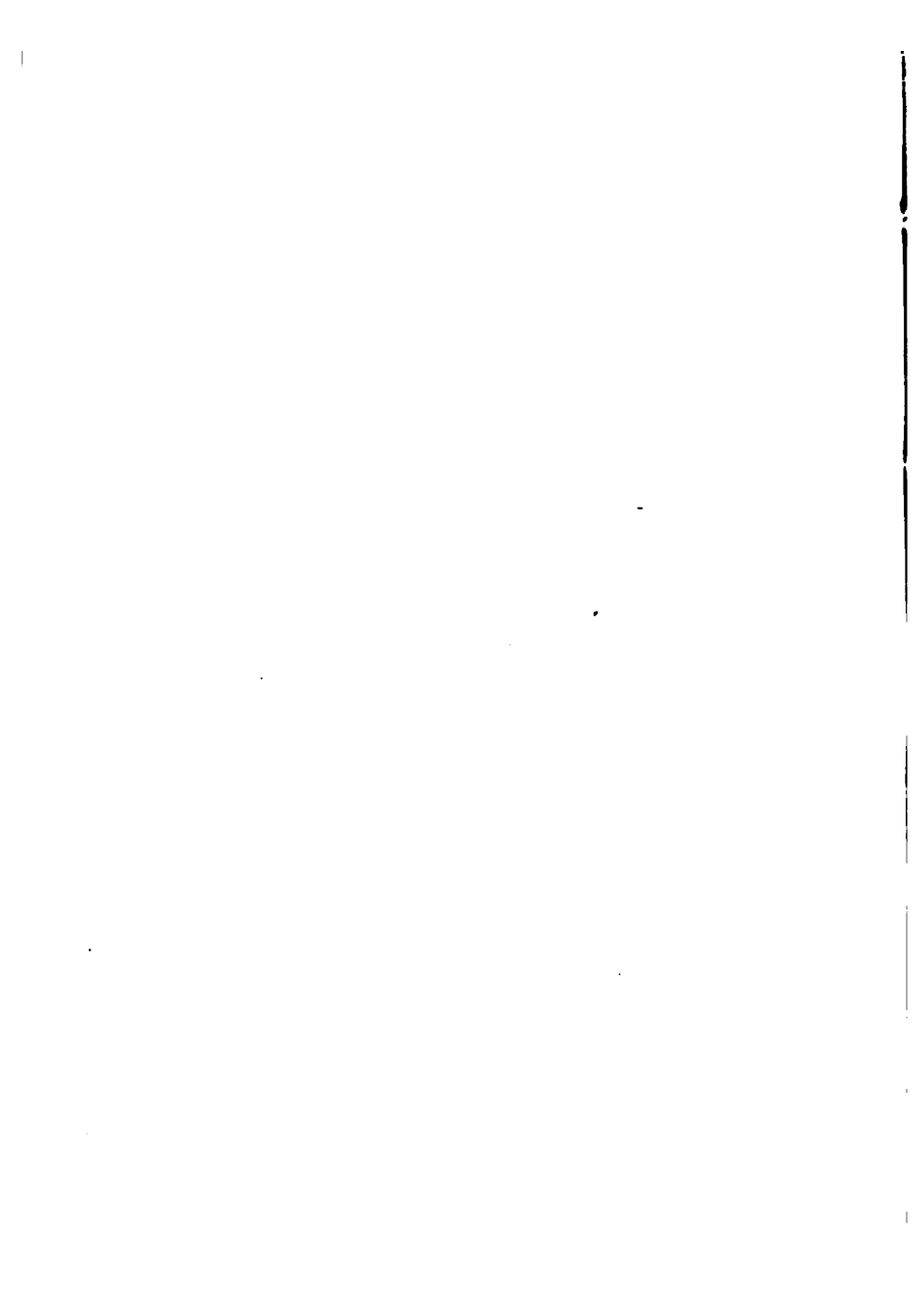
Section 1. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been incurred by a posse comitatus in criminal cases; provided, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

**Act takes effect when.**

Sec. 2. This act shall take effect and be in force from and after its passage.



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**INFORMATION.** See Demurrer; Indictment; Pleading; Accusation, etc.

- Accessory, against, though principal not informed against, § 972.
- Accessory before fact, and principal, distinction abolished, § 971.
- Acquittal of one or more when several charged, § 970.
- Acts constituting offense, how alleged, §§ 950, 951, 959.
- Alternative, offense may be charged in, § 954.

**INFORMATION. (Continued.)**

- Answer to, allowance of time for on arraignment, § 990.
- Appeal lies from ruling on, § 1238.
- Arrest of judgment for defects in, § 1185.
- Arrest, without warrant, on, § 849.
- Certain, must be, as to what, § 952.
- Certainty, sufficiency of, § 959.
- Complaint defined, § 806.
- Conspiracy to cheat, or defraud of money, bank notes, etc., for, § 967.
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- Defect of form, not insufficient for, § 960.
- Defects in, what do not affect, § 959.
- Defendant can be convicted of but one offense charged, § 954.
- Demurrer, allowance of, examination before magistrate after, § 1008.
- Demurrer, how far a bar when allowed, § 1008.
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- Description of offense, sufficiency of, §§ 950, 951, 959.
- Different offenses, charging, § 954.
- Different offenses relating to same act may be charged, § 954.
- Different statements of same offense permitted, § 954.
- Direct, must be, as to what, § 952.
- Discharge of defendant where no information filed, § 998.
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- Dismissal of, not a former acquittal, § 1021.
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- Embezzlement of money, bank notes, etc., for, § 967.
- Erroneous statement as to person injured, immaterial, when, § 956.
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- Errors not affecting substantial rights not material, § 1404.
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- Forgery, for, misdescription of instrument, when immaterial, § 965.
- Form, defect of, not tending to prejudice defendant does not vitiate, § 960.
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**INFORMATION.** (Continued.)

- Impeachment not a bar to, § 758.
- Inaufficient, not, for defect of form, § 960.
- Joint, discharging defendant that he may be witness, §§ 1099-1101.
- Joint, one or more may be convicted or acquitted, § 970.
- Joint, separate trials, § 1098.
- Judicial notice, matters of need not be stated, § 861.
- Judgment pleaded, how, § 962.
- Justice's court, proceedings in need not be prosecuted by indictment or, § 682.
- Larceny, of money, bank notes, etc., for, § 967.
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- Name, in wrong, proceedings at arraignment, § 989.
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- Objection of want of jurisdiction, how and when may be taken, § 1012.
- Objection of want of jurisdiction, not waived by failure to demur, § 1012.
- Objection that facts stated are not an offense, not waived by failure to demur, § 1012.
- Objection that facts stated not an offense, how and when may be taken, § 1012.
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- Obscene books, pictures, etc., for selling, etc., § 968.
- Offense may be charged in alternative, § 954.
- Offense may be charged in different counts, § 954.
- Offenses occurring at different times and places not to be joined, § 954.
- Offense, one only to be charged, § 954.
- Offenses to be prosecuted by indictment or, § 682.
- Offenses, what need not be prosecuted by indictment or, § 682.
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- Place of offense, allegation of, § 959.
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- Prior conviction, charge not to be read to jury or alluded to, § 1025.

**INFORMATION.** (Continued.)

- Prior convictions, how charged, § 969.
- Prior convictions, not more than two to be charged, § 969.
- Private injury, statement as to person injured, § 956.
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**PROCEDURE**

3. To determine the extent of the damage to the structure of the building.

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**CONCLUSIONS**

5. To determine the extent of the damage to the structure of the building.

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6. To determine the extent of the damage to the structure of the building.

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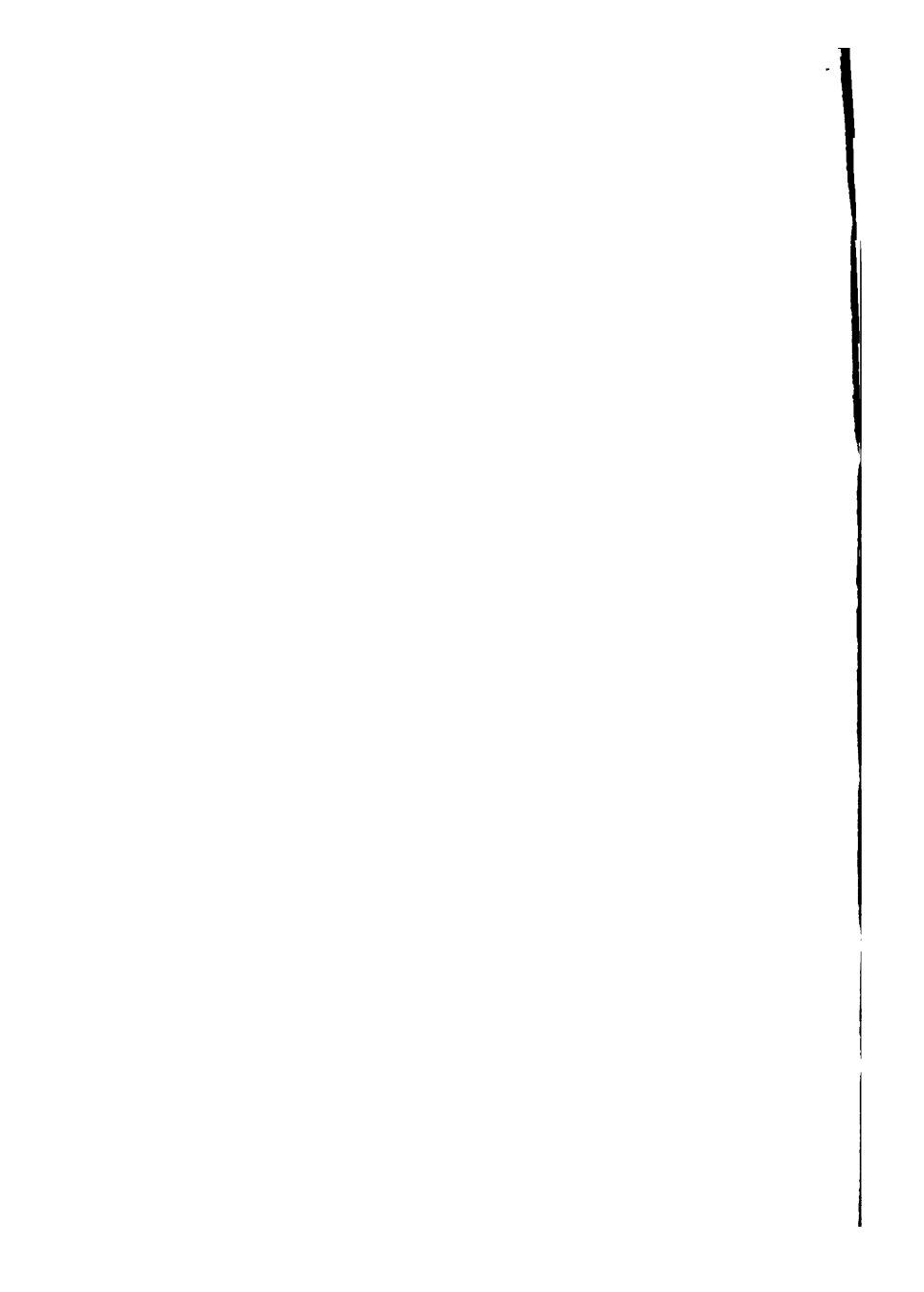


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